

No. 12568

United States  
Court of Appeals  
for the Ninth Circuit.

NATIONAL LABOR RELATIONS BOARD,  
Petitioner,  
vs.

WARNER BROS. PICTURES, INC., CO-  
LUMBIA PICTURES CORPORATION and  
LOEW'S INCORPORATED,  
Respondent.

Transcript of Record  
In Two Volumes  
Volume I  
(Pages 1 to 422)

Petition for Enforcement of Order of the  
National Labor Relations Board

FILED

AUG 30 1950



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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*National Labor Relations Board*

United States of America  
Before the National Labor Relations Board

Case No. 21-C-2505

In the Matter of

COLUMBIA PICTURES CORPORATION and  
ASSOCIATION OF MOTION PICTURE  
PRODUCERS, INC.,

and

JOSEPH CUCCIA.

Case No. 21-C-2562

In the Matter of

COLUMBIA PICTURES CORPORATION and  
ASSOCIATION OF MOTION PICTURE  
PRODUCERS, INC.,

and

IRWIN P. HENTSCHEL.

Case No. 21-C-2563

In the Matter of

REPUBLIC PRODUCTIONS, INC., and  
ASSOCIATION OF MOTION PICTURE  
PRODUCERS, INC.,

and

ROBERT AMES.

Case No. 21-C-2564

In the Matter of

WARNER BROS. PICTURES, INC., and  
ASSOCIATION OF MOTION PICTURE  
PRODUCERS, INC.,

and

L. G. BATCHELDER, PAUL De SANCTIS,  
CARL H. GIDLUND, G. M. HAND, CHAS.  
JENSEN, LEO LAMB, R. M. LORA, H. C.  
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J. C. GOUDIE, CHAS. J. LARSON, FRED  
SEWARD, B. KENNETH COFFEY and  
WILLIS HOWE.

Case No. 21-C-2660

In the Matter of

WARNER BROS. PICTURES, INC., and  
ASSOCIATION OF MOTION PICTURE  
PRODUCERS, INC.,

and

J. HAROLD ROGERS.

Case No. 21-C-2662

In the Matter of

LOEW'S INCORPORATED and  
ASSOCIATION OF MOTION PICTURE  
PRODUCERS, INC.,

and

GEORGE I. GROTH and ROBERT L. SEL-  
GRATH.

Case No. 21-C-2664

In the Matter of

TWENTIETH CENTURY-FOX FILM COR-  
PORATION and ASSOCIATION OF  
MOTION PICTURE PRODUCERS, INC.,

and

EUGENE V. MAILES.

Case No. 21-C-2665

In the Matter of

RKO RADIO PICTURES, INC., and  
ASSOCIATION OF MOTION PICTURE  
PRODUCERS, INC.,

and

FORREST McLONEY.

### DECISION AND ORDER

On March 20, 1947, Trial Examiner Mortimer Riemer issued his Intermediate Report in the above-entitled proceeding, finding that certain of the Respondents had engaged in and were engaging in certain unfair labor practices<sup>1</sup> and recommending

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<sup>1</sup>The provisions of Section 8 (1) and 8 (3) of the National Labor Relations Act, which the Trial Examiner found certain of the Respondents had violated, are continued in Section 8 (a) (1) and 8 (a) (3) of the Act, as amended by the Labor Management Relations Act, 1947.

that they cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. The Trial Examiner further found that Respondent RKO had not engaged in the alleged unfair labor practices, and that certain other Respondents had not engaged in certain other alleged unfair labor practices and recommended that these allegations of the complaint be dismissed and that the complaint be dismissed as against Respondent RKO.

The Respondents, the Alliance and certain of the complainants<sup>2</sup> filed exceptions to the Intermediate Report and briefs in support of their exceptions. On July 13, 1948, upon request of the Respondents and the Alliance, and pursuant to notice, the Board, at Washington, D. C., heard oral argument. The Respondents, the Alliance, and certain of the complainants were represented by counsel and participated in the argument.

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the

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<sup>2</sup>Joint exceptions and briefs were filed on behalf of complainants Robert W. Ames, George M. Hand, Irwin P. Hentschel, Charles Jenson, Leo Leonard Lamb, Raymond M. Lora, Eugene V. Mailes, Jesse L. Sapp, John L. Selgrath, George Stoica, Jr., and William G. White. Complainants Robert N. Bonning and William J. Simpson each filed a letter, which has been considered as exceptions.

Intermediate Report, the exceptions and briefs, the contentions advanced at oral argument, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the exceptions and modifications set forth below.

1. We agree with, and adopt, the finding of the Trial Examiner that Respondent Association is an employer within the meaning of the Act.<sup>3</sup>

2. We are of the opinion that the Trial Examiner correctly denied the Respondents' motion to dismiss the complaint insofar as it alleged discrimination against Seward, Coffey, Howe, and Stanley, on the ground that no charge had been filed on their behalf. There is ample authority to the effect that the contents of the charge do not limit the scope of the complaint, and that a respondent is not prejudiced by failure of the charge to include particular unfair labor practices later litigated so long as the respondent had ample notice and opportunity to defend.<sup>4</sup>

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<sup>3</sup>Matter of Association of Motion Picture Producers, Inc., et al., 79 N. L. R. B., No. 68.

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<sup>4</sup>Consolidated Edison Company of New York, Inc., et al., v. N. L. R. B., 305 U. S. 197; Matter of Nebel Knitting Company, Inc., 6 N. L. R. B. 284, affirmed 103 F. 2d 594 (C. C. A. 4); Matter of Bird Machine Company, 65 N. L. R. B. 311; and Matter of The Hills Brothers Company, 67 N. L. R. B. 1249. See also National Licorice Company v. N. L. R. B., 309 U. S. 350. In N. L. R. B. v. Hopwood Retinning Co., Inc., et al., 98 F. 2d 97 (C. C. A. 2), cited by the respondents, charges were filed against Hopwood. During the hearing, the complaint was amended so



In the instant case, the Respondents do not contend that they were surprised or had insufficient notice.<sup>5</sup>

3. The Trial Examiner found that Respondent Warner discriminatorily discharged 14 prop makers<sup>6</sup> on March 19, 1945, in violation of the Act. We do not agree that they were discharged. Within a few hours after "Off Payroll Notices" were distributed to the entire morning shift of 38 prop makers,<sup>7</sup> Francis E. Fuhrmann, head of Respondent

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as to add Monarch as a party respondent. The court refused to enforce the Board's order against Monarch. The Hopwood case is distinguishable from the instant case and the cases cited above, for there Monarch had insufficient notice and was not accorded a reasonable opportunity to prepare its defense.

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<sup>5</sup>With respect to complainants Seward, Coffey, and Howe, a verified charge was filed with the Board, but it was neither formally docketed nor served on the Respondents. However, counsel for the Respondents discussed these three cases with a representative of the Board. Moreover, the original consolidated complaint, which contained all four names, was served on the Respondents on July 19, 1946, almost 2 months before the hearing. We note, also, that the Respondents did, in fact, offer testimony at the hearing with respect to the discharges of Seward, Coffey, Howe, and Stanley.

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<sup>6</sup>Complainants Batchelder, Bonning, De Sanctis, Gidlund, Hand, Jensen, Lamb, Lora, MacKellar, Rogers, Sapp, Simpson, Stoica, and White.

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<sup>7</sup>Fuhrmann testified that "Off Payroll Notices," such as were issued to the prop makers on March 19, were customarily given to employees temporarily laid off as well as to discharged employees. The "Off Payroll Notices" do not contain any reference to "discharge" or to "termination."

Warner's technical department, called the "discharged" prop makers to the Warner studio. Addressing them as a group, Fuhrmann urged them to keep the studio operating. They agreed to do so under certain conditions, which Fuhrmann apparently accepted. Later, Fuhrmann telephoned some of the prop makers, stated that he could not keep the agreement, and asked the prop makers to come to work the next morning as carpenters. None complied. On March 22, the prop makers, by a vote of 19 to 16, determined ot return to work under the terms laid down by Fuhrmann.<sup>8</sup> The following day the majority of the prop makers did, in fact, return to the studio.

Despite Respondent Warner's policy of taking discharged employees back as new employees with no seniority, Fuhrmann testified that those returning on March 23 were not rehired as new employees and had never been taken off the payroll. During the remainder of the strike, complainant Stoica, one of the "discharged" Warner prop makers, saw Fuhrmann several times and asked for his old job. Fuhrmann told him that unless he agreed to work in the carpenter shop, he could not work again for Respondent Warner. On this point, Fuhrmann testified as follows:

Q. And the only way any of them could have gone back to work after March 19th, 1945,

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<sup>8</sup>We note that Gibbons, a representative of Respondent, attended the meeting at which this vote was taken, and urged the men to return to work as carpenters.



was by being willing to go into the carpenter shop. Is that correct?

A. By being willing to go into the carpenter shop, or if we had prop work to do, they would come in as prop makers.

In September, two other prop makers returned to the studio and performed carpenter work.<sup>9</sup> After the termination of the strike, the prop makers who had not previously returned to work applied for reinstatement. One<sup>10</sup> was reinstated almost immediately and several others were taken back at later dates.<sup>11</sup>

In view of the above circumstances, we are convinced that the issuance of "Off Payroll Notices" to the prop makers on March 19 was only a tactical maneuver designed to encourage them to accede to Respondent Warner's demand that they perform carpentry work. The record is clear that any of them could have been reinstated during the strike, if only they agreed to the terms imposed upon them. In fact, the pressure thus brought to bear was successful in securing the capitulation of the majority. It is therefore evident that those who held out to the end had not been discharged, but voluntarily and collectively withheld their labor rather than indulge in conduct which violated their principles. In effect,

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<sup>9</sup>G. Schnell and Harold R. Horner. These employees are not complainants herein.

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<sup>10</sup>Complainant Paul De Sanctis.

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<sup>11</sup>See footnote 17, *infra*.

they were engaging in a concerted refusal to work, for their mutual aid and protection. Hence, they were strikers<sup>12</sup> and should be treated no differently, in view of the Cincinnati Agreement, than the other strikers mentioned in Section 5, *infra*.

4. The Trial Examiner found that three other complainants employed by Respondent Warner<sup>13</sup> refused to cross the picket line established by the CSU on March 12, 1945, and remained away from the studio for the duration of the strike. He further found that seven other complainants, employees of various Respondents,<sup>14</sup> voluntarily absented themselves from their jobs rather than perform the work of striking employees. We adopt these findings.<sup>15</sup> Accordingly, we are of the opinion that these complainants, like the Warner prop makers, were strikers, engaged in concerted activities for their mutual aid and protection.

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<sup>12</sup>We do not adopt the Trial Examiner's finding that the Warner prop makers were "partial strikers."

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<sup>13</sup>Complainants John G. Goudie, Kenneth B. Coffey, and Willis F. Howe.

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<sup>14</sup>Complainants Larson, Seward, and Stanley, employed by Respondent Warner; Cuccia and Hentschel, employees of Respondent Columbia; and Groth and Selgrath, employed by Respondent Loew's.

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<sup>15</sup>We reject the contention of the complainants that these complainants were constructively discharged.

5. From October 15 to 24, 1945, while the CSU strike was in progress, the Executive Council of the AFL met in Cincinnati, Ohio, to resolve the dispute which had led to the CSU strike. It appears that the Respondents and the Alliance were represented at these meetings. On October 25, the Executive Council of the AFL issued a document referred to as the Cincinnati Agreement. Among other provisions, it ordered that the CSU strike be terminated and that "all employees return to work immediately." This directive was accepted by the unions involved, including the Alliance.

While all parties concerned apparently understood that all employees who had been "on call" on March 12, 1945, should return to the jobs they held on that date, a dispute soon arose as to whether or not employees who would be displaced by the returning strikers were to continue to work. To settle this conflict, representatives of the Respondents, the Alliance, and the CSU unions went to Washington, reviewed the minutes of the Cincinnati meetings, and conferred with the Executive Council of the AFL.

As a result, the Executive Council issued a "clarification" which stated, in effect, that the Cincinnati Agreement had directed that both strikers and replacements were to be employed for at least 60 days, within which period a jurisdictional award was to be made. Furthermore, the Executive Council directed that the Respondents should exercise their "usual prerogative" as to where they assigned their employees to work. In other words, strikers as well as replacements were to return to work pending a

jurisdictional award, and the Respondents in the meantime had discretion to assign the work among both groups in any manner the Respondents desired. Clearly, the Respondents and the Alliance accepted the Cincinnati Agreement and its "clarification." Under these agreed terms, the CSU strikers returned to work on October 31, 1945.

The 24 complainants discussed above had been "on call" on March 12, 1945, the day the strike commenced. They therefore came within the provisions of the Cincinnati Agreement and were entitled to be reinstated to their old jobs after October 31, 1945, on equal terms with the CSU strikers.<sup>16</sup> All sought reinstatement. The Respondents, however, instead of rehiring these complainants, obliged them to obtain clearance from the Alliance solely because of their activities during the strike. This is unquestionably demonstrated by the instructions issued to the Respondent producers by Fred E. Pelton, the producers' labor administrator, on October 31, 1945. Those few who eventually secured the necessary clearance from the Alliance were subsequently reinstated,<sup>17</sup> but the remainder have never been taken back.<sup>18</sup>

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<sup>16</sup>We reject the contention of the Respondents that the Cincinnati Agreement had no application to recalcitrant Alliance members.

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<sup>17</sup>Complainant De Sanctis conferred with officials of the Alliance on November 6, 1945, and as a result was reinstated by Respondent Warner on November 7, 1945, as a new employee. Complainant MacKellar was re-employed by Respondent Warner on August 5, 1946, "through the union." Complainant Rogers was called by the Alliance on February 11,



Having obligated themselves to take back all strikers, the Respondent could not lawfully discriminate against the complainants solely because of their activities during the strike.<sup>19</sup> And this is true even though the Respondents, absent the Cincinnati Agreement, might perhaps have justified

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1946, and was told to report to the studio the next day: accordingly, he was reinstated by Respondent Warner on February 12, 1946. Complainant Selgrath received word from the Alliance on December 18, 1945, advising him to return to work the next day. On December 19, 1945, the Alliance advised Respondent Loew's that Selgrath could return to work in a lower paid position. Selgrath was re-employed by Respondent Loew's on December 19, 1945, as a new employee in a lower paid position. Complainant Stanley was reinstated by Respondent Warner about November 14, 1945, through a call to the Alliance. He was given a total of 6 days' work spaced over a period of 3 or 4 weeks.

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<sup>18</sup>So far as the record shows, the only complainant who was taken back without clearance from the Alliance was Irwin P. Hentschel. He was reinstated by Respondent Columbia on October 31, 1945, for 1 day only, then "laid off" at the end of his shift. We find that the "lay off" was, in fact, a discriminatory discharge because of Hentschel's activities during the strike, motivated by Pelton's instructions of the same day.

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<sup>19</sup>L. M. Comes, Respondent Warner's chief electrician, admitted that he did not call back any employees who he knew had failed to cross the picket lines during the strike "unless they had good reason." Complainant Stoica testified that Carroll Sacks, Respondent Warner's labor relations manager, stated that he could not be reinstated because "it would be unfair to the men who had cooperated with the studio."

their discriminatory conduct on the grounds of the strike's arguably "illegal" character. However, whatever defense the Respondents might otherwise have had was waived by the Cincinnati Agreement. Thus the Respondents may not now be heard to say that the concerted activities in which the complainants engaged were not protected by the Act. As was said by the Court in the Hazel-Atlas case:<sup>20</sup>

In this instance the employer was under no legal compulsion to take the strikers back since they had violated the governing agreement; but when their breach was overlooked, and it was decided to reinstate them, they were entitled to even-handed treatment, and the exclusion of any of them for reasons condemned by the statute would have been an unfair labor practice.

Pelton's instructions to the Respondent producers cannot be reconciled with the over-all settlement of the strike contained in the Cincinnati Agreement. As between the two, the terms of the Cincinnati Agreement must prevail, as it was binding on the Respondents and the Alliance. Nor could the Respondents escape responsibility for their discriminatory conduct by the device of requiring the complainants, as a condition precedent to obtaining their rights under the Cincinnati Agreement, to se-

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<sup>20</sup>Hazel-Atlas Glass Company v. N. L. R. B., 127 F. 2d 109 (C. C. A. 4), at 118.

cure clearance from the Alliance.<sup>21</sup> We conclude that the complainants, like the CSU strikers, were entitled to be reinstated to their former positions on and after October 31, 1945, upon application. By discriminatorily refusing to reinstate complainants Batchelder, Bonning, Coffey, De Sanctis, Gidlund, Goudie, Hand, Howe, Jensen, Lamb, Larson, Lora, MacKellar, Rogers, Sapp, Seward, Simpson, Stanley, Stoica, and White on the respective dates on which they applied for reinstatement,<sup>22</sup> because

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<sup>21</sup>We find no merit in the Respondents' contention that referral to the Alliance was required by the closed-shop contracts. Neither the wording of the contracts nor the previous conduct of the parties indicates that the contracts were meant to have such an effect.

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<sup>22</sup>We find that these complainants applied for reinstatement of the following dates:

Batchelder, on October 31, 1945, as found by the Trial Examiner.

Bonning, on November 14, 1945, contrary to the Trial Examiner's finding.

Coffey, on October 31, 1945, as found by the Trial Examiner.

De Sanctis, on November 6, 1945, the day before he was reinstated as a new employee. Reinstatement as a new employee, we find, was discriminatory.

Gidlund, on October 31, 1945.

Goudie, on October 31, 1945.

Hand, on November 6, 1945, contrary to the Trial Examiner's finding.

Howe, on October 31, 1945, as found by the Trial Examiner.

Jensen, on November 6, 1945, as testified by De

of their collective activities during the strike, Respondent Warner has engaged in unfair labor practices. By discriminatorily discharging complainant Hentschel on October 31, 1945,<sup>23</sup> and refusing to reinstate complainant Cuccia on November 15, 1945,<sup>24</sup> Respondent Columbia has violated the Act. By discriminatorily refusing to reinstate complainant Selgrath on October 31, 1945,<sup>25</sup> and complainant Groth

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Sanctis.

Lamb, on October 31, 1945, as found by the Trial Examiner.

Larson, on November 2, 1945, contrary to the Trial Examiner's finding.

Lora, on October 31, 1945, as found by the Trial Examiner.

MacKellar, on November 14, 1945.

Rogers, on October 31, 1945, as found by the Trial Examiner.

Sapp, on November 6, 1945.

Seward, on October 31, 1945, as found by the Trial Examiner.

Simpson, on November 1, 1945.

Stanley, on October 31, 1945, as found by the Trial Examiner. Although "reinstated" in November, 1945, he received a total of only 6 days' work spaced over a period of 3 or 4 weeks. This intermittent employment, we hold, was not a bona fide reinstatement to his former position, but a discriminatory refusal to reinstate.

Stoica, on October 31, 1945, contrary to the Trial Examiner's finding.

White, on November 6, 1945, as found by the Trial Examiner.

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<sup>23</sup>See footnote 18, *supra*.

<sup>24</sup>Cuccia set the date as "sometime in November, 1945, right after the strike. It might be the first part of December." We adopt a mean date.

<sup>25</sup>Respondent Loew's was advised by the Alliance



on November 3, 1945, Respondent Loew's has engaged in unfair labor practices. By issuing orders to the Respondent producers on October 31, 1945, which caused Respondents Warner, Columbia, and Loew's to commit these unfair labor practices, Respondent Association has violated the Act.

6. The Respondents and the Alliance argue that the CSU strike was not protected activity, that the complainants were not engaged in protected activity because they were "wildcat" strikers, and that the Warner prop makers were properly discharged for insubordination because they attempted to stay on their jobs and draw pay while refusing to obey the lawful orders of the Respondents.<sup>26</sup> If the complainants were not engaged in concerted activity protected by the Act, their conduct may have justified the Respondents in denying them reinstatement. But the Respondents waived this justification by

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on October 31 or November 1, 1945, that Selgrath was not in good standing as a member. Selgrath, in fact, was a member in good standing at all pertinent times. Assuming, without deciding, that Respondent Loew's relied in good faith on this notice and, for this reason, refused to reinstate Selgrath, we believe that the refusal to rehire him was nevertheless discriminatory. See *Matter of General Electric X-Ray Corporation*, 76 N. L. R. B. 64. We are of the opinion that the Cincinnati Agreement superseded the closed-shop contract insofar as reinstatement of the strikers was concerned. We adopt the date of October 31, 1945, as the date of Selgrath's application for reinstatement, rather than the date of November 1, 1945, found by the Trial Examiner.

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<sup>26</sup>As previously found, the Warner prop makers were not "discharged." The "Off Payroll Notices" were merely a tactical maneuver.

joining in the Cincinnati Agreement.<sup>27</sup> Having agreed to reinstate all striking employees (including the CSU strikers) in the interest of industrial harmony, the Respondents could not later discriminate against the complainants because of their conduct before the settlement of the strike. The crux of the Respondents' unlawful discrimination is the disparity between their treatment of the complainants and their treatment of the CSU strikers, after having agreed to treat all alike.<sup>28</sup> Accordingly, we find it unnecessary to decide herein whether or not, during the strike, the complainants were engaged in protected concerted activity.<sup>29</sup>

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<sup>27</sup>*Stewart Die Casting Corporation v. N. L. R. B.*, 114 F. 2d 849 (C. C. A. 7), cert. den. 312 U. S. 680; *N. L. R. B. v. Aladdin Industries, Inc.*, 125 F. 2d 377 (C. C. A. 7), cert. den. 316 U. S. 706; *Matter of The Carey Salt Company*, 70 N. L. R. B. 1099; *Matter of Victory Fluorspar Mining Company, et al.*, 72 N. L. R. B. 1356; and *Matter of The Fafnir Bearing Company*, 73 N. L. R. B. 1008.

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<sup>28</sup>The Respondents argue that they did not rehire the complainants because there were no vacant jobs for them. In view of the fact that the Respondents reinstated all the CSU strikers despite their prior replacement, we find no merit in this contention. Assuming, for the purposes of argument, that the complainants had been replaced during the strike, the same was undoubtedly true of the CSU strikers. The failure to reinstate the complainants, therefore, serves to emphasize the unequal treatment accorded them. Accordingly, we need not, and do not, make any findings with respect to the replacement of the complainants during the strike.

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<sup>29</sup>For this reason, we shall not disturb the Trial Examiner's refusal to take judicial notice of certain

7. The Trial Examiner concluded that the Respondents violated Section 8 (3) of the Act by discriminating in regard to the hire and tenure of employment of the complainants, thereby discouraging membership in the Alliance. The Respondents and the Alliance except to this conclusion, urging that the Respondents' conduct could not have discouraged membership in the Alliance. We are convinced and find that the discriminatory discharge and refusals to reinstate discussed above constituted interference, restraint, and coercion of the complainants in the exercise of the rights guaranteed them in Section 7 of the Act, in violation of Section 8 (1) of the Act. Viewing the discriminatory conduct as a violation only of Section 8 (1) of the Act, we find that effectuation of the policies of the Act requires the remedy set forth below.<sup>30</sup> Accordingly, we do not adopt the Trial Examiner's finding that the Re-

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administrative and procedural matters arising in connection with the previous representation case (64 N. L. R. B. 490), offered for the purpose of showing the illegality of the CSU strike. We therefore need not rule on the motion of counsel for the Board and counsel for the Alliance that, if we overrule the Trial Examiner in this respect, the case be remanded for further hearing.

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<sup>30</sup>Matter of Texas Textile Mills, 58 N. L. R. B. 353; Matter of Ever Ready Label Corporation, 54 N. L. R. B. 551; Matter of Home Beneficial Life Insurance Co., 69 N. L. R. B. 32; and Matter of Spencer Auto Electric, Inc., 73 N. L. R. B. 1416. See also N. L. R. B. v. Hymie Schwartz, d/b/a Lion Brand Manufacturing Company, 146 F. 2d. 773 (C. C. A. 5), enf'g as mod. 55 N. L. R. B. 798.

spondents' conduct discouraged membership in the Alliance in violation of Section 8 (3) of the Act.

8. The Trial Examiner found that sufficient reason existed for Respondent Warner's refusal to reinstate complainant Stanley in his old job on and after November 29, 1945,<sup>31</sup> because of Stanley's misconduct on that date. We adopt this finding, to which no party excepts.

9. On motion of counsel for the Board, the Trial Examiner dismissed the complaint against Respondent Warner, insofar as it alleged the discriminatory discharge of H. C. MacDonald. We agree.

10. The Trial Examiner found that Respondent Republic discriminatorily refused to reinstate complainant Robert W. Ames on or about October 31, 1945. We do not agree. We adopt the Trial Examiner's finding that Ames' layoff on March 29, 1945, was not motivated by Ames' refusal to perform carpentry work. As Ames was legitimately laid off, he remained a laid-off employee for the duration of the strike. As such, he was not covered by the terms of the Cincinnati Agreement. He was not a striker, and there is no evidence that he was refused reinstatement because of any concerted ac-

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<sup>31</sup>Stanley was not discharged on November 29, 1945, but merely taken off the call list. After that date, Respondent Warner would not have called him directly, but would have accepted him if he had been sent by the Alliance in response to a general request for "more men."



tivity.<sup>32</sup> Accordingly, we find that the refusal to rehire Ames on or about October 31, 1945, was not a violation of the Act, and we shall therefore dismiss the complaint against Respondent Republic.<sup>33</sup>

11. The Trial Examiner found that Respondent Twentieth Century discriminatorily refused to reinstate complainant Eugene V. Mailes on October 31, 1945. We do not agree. Mailes worked at his regular job during the strike and up to October 1, 1945. During that time he was never asked to perform any work over which the jurisdiction of any of the striking CSU unions had been clearly established. On October 1, 1945, Mailes went on his regular paid vacation which was authorized to run from October 1 to 13, 1945, inclusive. However, he did not report for work again until after the strike was ended. As set forth in the Intermediate Report, he made certain attempts to secure an indefinite extension of his vacation, without pay. It appears that Mailes

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<sup>32</sup>Ames testified that, when he applied for reinstatement after the strike had terminated, he spoke to MacDonald, Respondent Republic's personnel manager. According to Ames, MacDonald said: "Well, your case is different, Ames. You weren't on strike, were you?" and Ames replied, "No, but since I was laid off I have respected picket lines." It is difficult for us to conceive how an employee, while laid off, can "respect" picket lines. Ames' testimony clearly stamps him as a laid-off employee, rather than a striker.

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<sup>33</sup>Case No. 21-C-2563. The alleged discriminatory refusal to reinstate Ames was the only violation of the Act of which the Trial Examiner found Respondent Republic to have been guilty.

did not obtain the necessary extension in the prescribed manner, and was therefore dropped from the payroll after 6 days of unauthorized absence, in accordance with Respondent Twentieth Century's custom.<sup>34</sup> There is some evidence that the refusal to reinstate Mailes was based, in part, on Respondent Twentieth Century's belief that he had voluntarily quit.<sup>35</sup> Mailes' actual reason for remaining away from his job from the end of his approved vacation until the termination of the strike is not clear.<sup>36</sup>

In view of the fact that, prior to his vacation, Mailes had continuously crossed the picket line over

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<sup>34</sup>The Respondent introduced into evidence a "Daily Report of Changes in Personnel" bearing an "effective date" of October 13, 1945, and stamped October 22, 1945. It lists Mailes under "employees closed today." The Trial Examiner refused to accord any weight to this document on the ground that it was prepared on October 13, 1945, before Mailes was due to return. We do not agree. We find that the document was prepared on October 22, 1945, effective as of October 13, 1945, and have given it due consideration.

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<sup>35</sup>Mailes testified that Meyer, Respondent Twentieth Century's personnel manager, told him in November, 1945, "that the information he had had from the payroll department was that I had voluntarily quit my job."

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<sup>36</sup>Mailes testified that, on October 15, 1945, he told his superior he desired an extension because "there was a chance of some of us being instrumental in bringing it (the strike) to a quick and amicable conclusion." He further testified that, a few days later, he told another superior he wanted an extension "because of the increased violence on the picket line."

a period of more than 6 months and had not been asked to perform strikers' work, we cannot assume that Mailes became a striker. Moreover, we agree with the finding of the Trial Examiner that Mailes had requested an indefinite extension of his vacation without pay, and had reasonable ground to believe that his request had been granted. The essence of a strike is the voluntary concerted withholding of labor requested by an employer. It would therefore be illogical to consider as a striker an employee who had requested and who believed he had obtained permission to absent himself from work. A striker does not seek permission to strike. Consequently, we find that Mailes was not a striker and was not covered by the terms of the Cincinnati Agreement. Accordingly, we find that the refusal to reinstate Mailes on October 31, 1945, was not a violation of the Act. We shall therefore dismiss the complaint against Respondent Twentieth Century.<sup>37</sup>

12. On motion of counsel for the Board, the Trial Examiner dismissed the complaint against Respondent RKO, insofar as it alleged the discriminatory refusal to reinstate complainant Forrest McLoney from October 31 to December 27, 1945. As the record discloses no evidence that Respondent RKO engaged in any other conduct violative of the

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<sup>37</sup>Case No. 21-C-2664. The alleged discriminatory refusal to reinstate Mailes was the only violation of the Act of which the Trial Examiner found Respondent Twentieth Century guilty.

Act, we shall dismiss the complaint against Respondent RKO in its entirety.<sup>38</sup>

13. We agree with the Trial Examiner's conclusions that, under the circumstances of this case, the alleged "bonus" payments were not unlawful, and that the Respondents did not violate Section 8 (1) of the Act by making such payments.<sup>39</sup>

14. In view of the fact that we have found Respondent Warner guilty of violating Section 8 (1) of the Act, we deem it unnecessary to determine whether or not Fuhrmann's alleged threat to the Warner prop makers constituted a further violation of Section 8 (1). We therefore do not adopt the Trial Examiner's finding in this respect.

15. We adopt the Trial Examiner's finding, to which no exception was taken, that the Respondents have not violated Section 8 (1) of the Act by interrogating employees with respect to their union membership and affiliation.

### The Remedy

Having found that Respondents Warner, Columbia, Loew's and Association violated Section 8 (1) of the Act, we shall order that these Respondents cease and desist therefrom and take certain affirma-

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<sup>38</sup>Case No. 21-C-2665.

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<sup>39</sup>Matter of Association of Motion Picture Producers, Inc., et al., 79 N. L. R. B. 466. See also R. H. Macy & Co., Inc., v. New York State Labor Relations Board, et al., 79 N. Y. Sup. 2d 847 (N. Y. Sup. Ct., N. Y. County).



tive action which we find necessary to effectuate the policies of the Act.

a. Complainants Expelled from the Alliance.

At all material times, the respondent producers were parties to a collective bargaining contract with the Alliance which covers various units containing the complainants. This agreement contains closed-shop provisions. About 8 months after the discriminatory refusals to reinstate the complainants, certain of the complainants<sup>40</sup> were expelled or suspended from membership in the Alliance. The record is silent as to the reasons for these expulsions and suspensions.

The validity of the closed-shop contract is not in question. nor is it disputed that the complainants came within its coverage. The Respondents and the Alliance contend that the expelled and suspended complainants have rendered themselves ineligible for employment and that the Board is consequently without authority to order their reinstatement. The Trial Examiner, rejecting these arguments, recommended the reinstatement of the expelled and sus-

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<sup>40</sup>Under sentence dated May 31, 1946, and served on June 14, 1946, complainants Gidlund, Hentschel, Lamb, Lora, Sapp, and Stoica were expelled from the Alliance and complainants Batchelder and Hand were suspended for a period of 6 months starting June 17, 1946, and fined \$300 each, payable within 2 months on pain of automatic expulsion. Neither Batchelder nor Hand paid the fine. The Respondents were notified of these expulsions and suspensions on June 14, 1946.

pended complainants, and the Respondents and the Alliance have excepted to this ruling. We find merit in these exceptions. In considering this matter, we need not pass upon the extent of the Board's power to reinstate the complainants in question. We think that, under the circumstances of this case, it would be unwise to override the contractual rights and obligations of the parties to a valid closed-shop contract, and thus undermine the effective disciplinary power of the Alliance.<sup>41</sup> Therefore, it would not effectuate the policies of the Act to order the reinstatement of those complainants who were expelled or suspended from the Alliance. We shall award back pay to each of them only up to the date of his expulsion or suspension, as the case may be.

Complainants Gidlund and Lamb were discriminatorily denied reinstatement by Respondent Warner on October 31, 1945, and complainant Sapp on November 6, 1945. They were expelled from the Alliance under sentence served on June 14, 1946. Consequently, we shall not order their reinstatement.

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<sup>41</sup>The expulsions and suspensions discussed above occurred more than 8 months after the termination of the strike, and the grounds therefor are not disclosed. In view of the lapse of time and the fact that other recalcitrant Alliance members continued in good standing, we cannot assume that the expulsions and suspensions were related to the complainants' activities during the strike. The Cincinnati Agreement therefore had no application to this situation. Consequently, these cases differ materially from the case of complainant Selgrath, discussed in footnote 25, *supra*.

ment. We shall, however, order Respondent Warner to make them whole for any loss of pay they may have suffered by reason of the discrimination against them by payment to each of them of a sum of money equal to that which he normally would have earned as wages from the date he was refused reinstatement to June 14, 1946, the date he became ineligible for re-employment, less his net earnings during said period.<sup>42</sup>

Complainant Lora was discriminatorily refused reinstatement on October 31, 1945. He was expelled from the Alliance by sentence served on July 14, 1946. Accordingly, we shall not order him reinstated. We adopt the Trial Examiner's finding that Lora made no particular effort to secure employ-

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<sup>42</sup>The Respondent maintains that Sapp made no reasonable effort to obtain employment after being refused reinstatement. This contention is apparently based on the fact that Sapp, because of illness, refused a job offered by Respondent Columbia. The record reveals that Sapp signed the Alliance call book on November 9, 1945, only 3 days after he had been refused reinstatement. On November 24, 1945, the Alliance sent him a telegram reading: "Please notify this local union if you are available to accept employment in positions which we may have to offer, or advise what you will accept."

He replied 2 days later as follows: "Willing and anxious to accept position held on March 12. Please advise."

Moreover, Sapp was employed for 6 months by the Yalta Restaurant Company and was supervising construction work for one Simon Lazarus, at the time of the hearing. Under all the circumstances, we are persuaded that Sapp made reasonable efforts to obtain employment.

ment after April 1, 1946. We therefore adopt that part of the Trial Examiner's recommendation which deals with Lora's reimbursement, except that his back pay shall commence on October 31, 1945.<sup>43</sup>

Complainant Stoica was discriminatorily refused reinstatement on October 31, 1945. By sentence served on June 14, 1946, he was expelled from the Alliance. Consequently, we shall not direct his reinstatement. The Respondents maintain that Stoica did not make reasonable efforts to obtain employment, relying on the facts that he refused an offer of employment by Respondent Columbia on November 16, 1945, that he declined several jobs offered him by hardware manufacturing companies, and that he spent time collecting donations for the complainants. We are of the opinion that Stoica had reasonable grounds for refusing the jobs tendered

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<sup>43</sup>The complainants urge that "consideration should be given to whether he registered with the U.S.E.S. and whether he refused to accept offers of employment made through the U.S.E.S." Registration with the United States Employment Service is conclusive evidence that a reasonable search for employment has been made. Matter of The Ohio Public Service Company, Inc., 52 N. L. R. B. 725; and Matter of Montgomery Hardwood Flooring Company, Inc., 72 N. L. R. B. 113. Accordingly, Lora's back pay may be increased by adding thereto any periods between April 1 and July 14, 1946, during which he was registered with the United States Employment Service and did not unreasonably refuse tendered employment or unreasonably quit employment entered upon, less his net earnings during said periods.



him.<sup>44</sup> Moreover, it is undisputed that Stoica signed the Alliance call book on November 9, 1945,<sup>45</sup> that he registered with the United States Employment Service,<sup>46</sup> that he worked 3 weeks at Respondent Republic and 2 days on the Ice Follies, and that he has been working at the Universal studio since May, 1946. Stoica testified that from October 31, 1945, until "about February, 1946," he spent full time collecting donations for the complainants and others. Under these circumstances, we find that, after February 1, 1946, Stoica made reasonable efforts to secure employment. Accordingly, we shall order Respondent Warner to make him whole for any loss of pay he may have suffered by reason of the discrimination against him by payment to him of a sum of money equal to that which he normally would have earned as wages from February 1,

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<sup>44</sup>Stoica testified without contradiction that he rejected the Columbia job because it was on the night shift, was for only 1 or 2 days, and was under one Bendowsky, whose name was on a list of witnesses against Stoica attached to charges filed against him before the Alliance. He also stated that he turned down the hardware positions because "the rate of pay was so low, I wouldnt have been able to support the family . . . just a fraction of what the studios used to pay me."

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<sup>45</sup>Alliance locals maintain call books upon which a member desiring employment may enter his name. Studios seeking employees are sent available men from among those listed in the call books.

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<sup>46</sup>See footnote 43, *supra*. The record does not disclose the date on which Stoica registered with the United States Employment Service.

1946,<sup>47</sup> to June 14, 1946, the date he disqualified himself for employment, less his net earnings during said period.

Complainant Hentschel was discriminatorily discharged by Respondent Columbia on October 31, 1945.<sup>48</sup> He was expelled from the Alliance by sentence served on July 14, 1946. Accordingly, we shall not order his reinstatement. We shall, however, order Respondent Columbia to reimburse him for loss of wages in the same manner in which we have heretofore ordered Respondent Warner to reimburse complainants Gidlund, Lamb, and Sapp.

Respondent Warner discriminatorily refused to reinstate complainant Batchelder on October 31, 1945, and complainant Hand on November 6, 1945. They were fined and suspended from the Alliance effective June 17, 1946, and subsequently automatically expelled for failure to pay the fines. Accordingly, we shall not order their reinstatement. We shall order Respondent Warner to make them whole for any loss of pay they may have suffered by reason of the discrimination against them by payment to each of them of a sum of money equal to that which he normally would have earned as

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<sup>47</sup>Stoica's back pay may be increased by adding thereto any periods between October 31, 1945, and February 1, 1946, during which he was registered with the United States Employment Service and did not unreasonably refuse tendered employment or unreasonably quit employment entered upon, less his net earnings during said periods.

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<sup>48</sup>See footnote 18, *supra*.



wages from the date he was refused reinstatement, to June 17, 1946, the date he became ineligible for re-employment, less his net earnings during said period.

b. Other Complainants

Complainant Bonning was discriminatorily refused reinstatement on November 14, 1945.<sup>49</sup> He obtained permanent work elsewhere in May or June, 1946, and has not desired reinstatement since that time. Accordingly, we shall not order him reinstated. We adopt the recommendations of the Trial Examiner with respect to his reimbursement, except that his back pay shall commence on November 14, 1945.

Complainant De Sanctis applied for reinstatement on November 6, 1945, and was reinstated on the following day as a new employee. We have found that his reinstatement as a new employee was discriminatory,<sup>50</sup> as it necessarily deprived him of his accumulated seniority.<sup>51</sup> We are of the opinion that nothing short of an order of reinstatement would provide him with adequate protection and effectuate

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<sup>49</sup>See footnote 22, *supra*. In view of this finding, we reject Bonning's contention that his back pay should commence March 19, 1945.

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<sup>50</sup>See footnotes 17 and 22, *supra*.

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<sup>51</sup>De Sanctis testified that he had worked for Respondent Warner "about 4 or 5 years." Fuhrmann testified that Respondent Warner's practice on layoffs, despite the seniority provisions of the Alliance contracts, was to prefer those who had the greatest seniority with the company.

the purposes of the Act. Accordingly, we shall order Respondent Warner to offer De Sanctis immediate and full reinstatement to his former or a substantially equivalent position, without prejudice to his seniority or other rights and privileges. It does not appear affirmatively that De Sanctis suffered any monetary loss. However, we shall order Respondent Warner to make him whole for any loss of pay he may have suffered by reason of his discriminatory reinstatement as a new employee, in the event that any such loss has occurred.

Complainant Goudie was likewise discriminatorily refused reinstatement on October 31, 1945. He desires reinstatement. The Respondents maintain that he wilfully incurred losses in earnings by failing to make a reasonable effort to obtain employment after he was denied reinstatement. Goudie signed the Alliance call book on February 14, 1946. He received 5 days' employment at Respondent Republic, but did not sign the call book again after that. The record discloses no other efforts by Goudie to obtain work. We find that Goudie did not make the kind of effort to obtain other employment which, under present conditions, a discharged employee may reasonably be expected to make. His loss in earnings is therefore found to have been a wilfully incurred loss, for which Respondent Warner should not, and will not, be directed to reimburse him.<sup>52</sup> We shall, however, adopt the Trial Examiner's

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<sup>52</sup>Matter of Carroll's Transfer Company, 56 N. L. R. B. 935.

recommendation with respect to Gouldie's reinstatement.

Complainant Jensen was, as we have found, discriminatorily refused reinstatement on November 6, 1945. The parties stipulated that Jensen is now employed by Respondent Twentieth Century and, since obtaining this employment in February, 1946, has no desire to be reinstated to his former position with Respondent Warner. Accordingly, we shall not order Jensen reinstated. We shall, however, adopt the Trial Examiner's recommendations with respect to his reimbursement, except that his back pay shall commence on November 6, 1945.

Complainant Larson, we have found, was discriminatorily denied reinstatement on November 2, 1945. He desires to be reinstated. The Respondents maintain that Larson failed to make a reasonable effort to obtain employment elsewhere. We find merit in this contention. Like complainant Goudie, Larson signed the Alliance call book on February 14, 1946. He did not receive any calls, but explained this by saying, "One trouble was I did not have no telephone at the time, or they probably would have called me." The record does not disclose that he made any further effort to obtain work. He testified as follows:

Q. Did you sign it again or keep your name in the call book?           A. No.

Q. Did you have another job?           A. No.

Q. Don't you want a job?

A. For Warner Bros., yes.

Q. Anybody else?           A. Not necessarily, no.

Q. Well, you were not willing to work for anybody else except Warner Bros., were you?

A. Well, I left Warner Bros., and figured I was entitled to go back there.

\* \* \*

Q. Did you make an effort to get another job?

A. No.

Under the circumstances, we do not believe that Larson made a reasonable effort to obtain employment elsewhere and we shall not order Respondent Warner to reimburse him for his wilfully incurred loss of earnings. We shall, however, adopt the Trial Examiner's recommendation with respect to Larson's reinstatement.

Complainant MacKellar was discriminatorily refused reinstatement on November 14, 1945. He was reinstated by Respondent Warner on August 5, 1946.<sup>53</sup> Accordingly, we shall not order his reinstatement. It appears that MacKellar spent the first 3 months after he was refused reinstatement working on his house and thus voluntarily made himself unavailable for employment during that period. Accordingly, we shall order Respondent Warner to make MacKellar whole for any loss of pay he may have suffered by reason of the discrimination against him, by payment to him of a sum of money equal to that which he normally would have earned as wages from February 1, 1946, to August 5, 1946,

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<sup>53</sup>We do not accept the date of August 1, 1946, adopted by the Trial Examiner as the date on which MacKellar was reinstated.

the date of his reinstatement, less his net earnings during said period.

Complainant Rogers was discriminatorily refused reinstatement on October 31, 1945. He was reinstated by Respondent Warner on February 12, 1946. Accordingly, we shall not order him reinstated. We shall, however, adopt the recommendation of the Trial Examiner with respect to Rogers' reimbursement, except that his back pay shall commence on October 31, 1945.

Complainant Seward was discriminatorily denied reinstatement on October 31, 1945. He desires reinstatement. As justifiably pointed out by the Respondents, Seward made no effort to find work prior to December, 1945. At that time, he left on a motor trip, was hospitalized, and was not available for reemployment for 2 or 2½ months. After regaining his health, he notified the Alliance that he desired employment, and also worked for 3 months laying cement blocks. We are of the opinion that Seward was not entitled to back pay for any period prior to his recuperation. We shall, therefore, adopt the Trial Examiner's recommendations with respect to the reinstatement and reimbursement of Seward, except that his back pay shall commence from the date of his recuperation from his illness.

Complainant Simpson was discriminatorily refused reinstatement on November 1, 1945. He desires reinstatement. Simpson was ill and unable to work from about June 1, 1945, to about January 1,



1946.<sup>54</sup> We shall adopt the recommendations of the Trial Examiner with respect to Simpson's reinstatement and reimbursement, except that his back pay shall commence on January 1, 1946, the date on which he was able to resume his employment.

Complainant White was discriminatorily denied reinstatement on November 6, 1945. He desires reinstatement. The Respondents maintain that White made no reasonable efforts to find work.<sup>55</sup> We do not agree. White worked for the Yalta Restaurant Company for an undisclosed period of time, and obtained "a couple of days' work, one place and

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<sup>54</sup>Simpson testified that he was ill and unable to work for a period of approximately 7 months. He testified that the "discharge" by Respondent Warner made him "very ill" and that "the results of this strike and being discharged, the fact that this is the first job that I was ever discharged from in my life and my association on the Warner Bros. lot touched me to a point where I had a complete collapse and a break-down." Simpson maintains that, since his illness was caused directly by his discriminatory "discharge," this period of time should not be deducted from his back-pay order. We do not agree. We note that the "discharge" occurred March 19, 1945, while Simpson's illness commenced several months later. Under all the circumstances, we are not convinced that Simpson's illness can be attributed to the actions of Respondent Warner.

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<sup>55</sup>This contention is apparently based on White's following testimony:

Q. Did you make any effort to get work?

A. I worked when I wanted to work.

Q. You were able to work whenever you wanted to work, weren't you?                      A. That's right.



another.” In addition, he spent part of time working on a small walnut ranch which he owns.<sup>56</sup> We find that White made reasonable efforts to obtain employment. Therefore, we shall adopt the recommendations of the Trial Examiner with respect to the reinstatement<sup>57</sup> and reimbursement of White, except that White’s back pay shall commence on November 6, 1945.

Complainant Cuccia, we have found, was discriminatorily denied reinstatement on November 15, 1945. He desires reinstatement. Following the refusal of his request for reinstatement, Cuccia was in business for himself until February, 1946. After that, he testified, he did not attempt to get other employment and, at the time of the hearing, he was “living on my twenty dollars a week right now.” The Respondents maintain that, after February, 1946, he made no reasonable effort to find work.<sup>58</sup>

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<sup>56</sup>White does not live on the ranch. We consider the time he spent working on this ranch as a period of self-employment.

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<sup>57</sup>White is a supervisor. However, exclusion of supervisors from coverage of the amended Act does not affect the Board’s power to issue an appropriate order to remedy unfair labor practices involving supervisors which occurred prior to the effective date of the Labor Management Relations Act, 1947. *Matter of Republic Steel Corporation (Upson Division)*, 77 N.L.R.B. 1107.

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<sup>58</sup>The Respondents apparently base their contention that Cuccia did not make a reasonable effort to work upon his following testimony on cross-examination:

Q. Did you work during the period of the strike

We cannot agree. In view of the fact that Cuccia is a veteran of World War II, we assume that the "twenty dollars a week" mentioned by Cuccia referred to benefits received by him under the Servicemen's Readjustment Act of 1944.<sup>59</sup> Registration with a public employment agency is a condition precedent to the receipt of such benefits.<sup>60</sup> We there-

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anywhere? A. No, I did not.

Q. Not any place? A. Not any place.

Q. Did you try to get work?

A. No. I went in the trucking business in which I unfortunately went broke.

\* \* \*

Q. All right. After the strike, did you work anywhere? A. No, I did not.

Q. Did you try to work anywhere?

A. No, I did not.

Q. Are you working now?

A. I am living on my twenty dollars a week now.

\* \* \*

Q. All right. Then did you work anywhere after the latter part of February, 1946?

A. No, I didn't then.

Q. Did you try to get work anywhere?

A. I have been trying to go back to Columbia, yes.

Q. Did you try to get work anywhere else?

A. No, I didn't.

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<sup>59</sup> 38 U.S.C.A. §693, et seq.

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<sup>60</sup>The Servicemen's Readjustment Act of 1944 provides, in part, as follows:

"Such person shall be deemed eligible to receive an allowance for any week of unemployment if \* \* \* the person is registered with and continues to report to a public employment office, in accordance with its regulations \* \* \*" 38 U.S.C.A. §696.

fore conclude that Cuccia made a reasonable search for employment during such periods as he was registered with a public employment agency. We adopt that part of the Trial Examiner's recommendation which requires Respondent Columbia to reinstate Cuccia. In addition, we will order Respondent Columbia to make Cuccia whole for any loss of pay he may have suffered by reason of the discrimination against him, by payment to him of a sum of money equal to that which he normally would have earned as wages from November 15, 1945, to the date of the offer of reinstatement, less his net earnings during said period, and excluding such periods, if any, after February 1, 1946, during which he was not registered with a public employment agency and made no reasonable efforts to secure employment.

We adopt the recommendations of the Trial Examiner with respect to the reinstatement of complainants Coffey and Howe by Respondent Warner, and of complainant Selgrath by Respondent Lowe's. We likewise adopt his recommendations as to the reimbursement by Respondent Warner of complainants Coffey,<sup>61</sup> Howe, and Stanley, and by Respondent Loew's of complainants Groth and Selgrath.

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<sup>61</sup>The Respondents maintain that Coffey made no reasonable effort to obtain work. This claim is apparently based upon his failure to re-sign the Alliance call book after he was laid off by Respondent Republic and his following testimony on cross-examination:

Q. Were you employed steadily during the early

We shall order Respondent Association to cease and desist from committing the unfair labor practices which we have found it committed. We shall dismiss the complaint as to Respondents Republic, Twentieth Century, and RKO, as we have found that these Respondents did not violate the Act.

### ORDER

Upon the entire record in the case and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that:

A. Respondents Warner Bros. Pictures, Inc., Burbank, California; Columbia Pictures Corporation, Los Angeles, California; and Loew's, Incorporated, Culver City, California, and their respective officers, agents, successors, and assigns, shall:

1. Cease and desist from interfering with, restraining, or coercing their employees in the exercise

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part of 1946?            A. It wasn't necessary.

Q. What wasn't necessary?

A. For me to be employed steadily.

Q. You didn't want to be employed?

A. Not according to the rules and regulations.

Q. What do you mean by that?

A. Well, do I have to beg for a job?

Coffey placed his name on the Alliance call book after the strike, received a call from respondent Republic, where he worked for 4 days, made several other efforts to obtain employment elsewhere, and worked a week at PRC, 11 weeks at Chaplin Studio, and an unspecified period at the Inyokern Naval Base. We consequently find that he made reasonable efforts to obtain employment.

of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any and all of such activities except to the extent that such right may be affected by agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a)(3) of the Act, as guaranteed in Section 7 of the Act, by discharging or refusing to reinstate any of their employees, or in any other manner discriminating in regard to their hire or tenure of employment, or any term or condition of their employment, because of their participation in concerted activities for their mutual aid or protection, or by any like or related conduct.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Respondent Warner Bros. Pictures, Inc., Burbank, California, and its officers, agents, successors, and assigns, shall:

(1) Offer Kenneth B. Coffey, Paul De Sanctis, John G. Goudie, Willis F. Howe, Charles J. Larson, Fred Seward, William J. Simpson, and William G. White immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority and other rights and privileges;



(2) Make whole Lynn George Batchelder, Robert N. Bonning, Kenneth B. Coffey, Paul De Sanctis, Carl H. Gidlund, George M. Hand, Willis F. Howe, Charles Jensen, Leo Leonard Lamb, Raymond M. Lora, Donald MacKellar, J. Harold Rogers, Jesse L. Sapp, Fred Seward, William J. Simpson, Paul L. Stanley, George Stoica, Jr., and William G. White for any loss of pay they may have suffered by reason of Respondent Warner's discrimination against them, in the manner set forth in "The Remedy," herein.

(b) Respondent Columbia Pictures Corporation, Los Angeles, California, and its officers, agents, successors and assigns, shall:

(1) Offer Joseph P. Cuccia immediate and full reinstatement to his former or a substantially equivalent position, without prejudice to his seniority and other rights and privileges;

(2) Make whole Joseph P. Cuccia and Irwin P. Hentschel for any loss of pay they may have suffered by reason of Respondent Columbia's discrimination against them, in the manner set forth in "The Remedy," herein.

(c) Respondent Loew's, Incorporated, Culver City, California, and its officers, agents, successors, and assigns, shall:

(1) Offer John L. Selgrath immediate and full reinstatement to his former or a substantially equivalent position, without prejudice to his seniority and other rights and privileges;



(2) Make whole George I. Groth and John L. Selgrath for any loss of pay they may have suffered by reason of Respondent Loew's discrimination against them, in the manner set forth in "The Remedy," herein.

(d) Post in conspicuous places throughout their respective studios copies of the notices attached hereto marked Appendices A, B, and C.<sup>62</sup> Copies of said notices, to be furnished by the Regional Director for the Twenty-first Region, shall, after being signed by representatives of the respective Respondents, be posted by the respective Respondents immediately upon receipt thereof and maintained by them for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondents to insure that said notices are not altered, defaced, or covered by any other material;

(e) Notify the Regional Director for the Twenty-first Region in writing, within ten (10) days from the date of this Order, what steps each of them has taken to comply herewith.

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<sup>62</sup>Respondent Warner shall sign and post copies of Appendix A, Respondent Columbia shall sign and post copies of Appendix B, and Respondent Loew's shall sign and post copies of Appendix C. In the event that this Order is enforced by decree of a United States Court of Appeals, there shall be inserted in the respective notices, before the words, "A Decision and Order," the words, "Decree of the United States Court of Appeals enforcing."

B. Respondent Association of Motion Picture Producers, Inc., Los Angeles, California, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from advising, urging, or otherwise influencing its member producers, directly or indirectly, to interfere with, restrain or coerce their employees in the exercise of the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any and all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the Act, as guaranteed in Section 7 of the Act, by discharging or refusing to reinstate any of their employees, or in any other manner discriminating in regard to their hire or tenure of employment, or any term or condition of their employment, because of their participation in concerted activities for their mutual aid or protection, or by any like or related conduct.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Immediately send copies of the notice attached hereto and marked Appendix,<sup>63</sup> after they

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<sup>63</sup>In the event that this Order is enforced by decree of a United States Court of Appeals, there

have been signed by a representative of Respondent Association, to all its members, including all the Respondent producers. Copies of said notice, to be furnished by the Regional Director for the Twenty-first Region, shall, after being signed by a representative of Respondent Association, be posted by Respondent Association immediately upon receipt thereof and maintained for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent Association to insure that said notices are not altered, defaced, or covered by any other material;

(b) Notify the Regional Director for the Twenty-first Region in writing, within ten (10) days from the date of this Order, what steps it has taken to comply herewith.

And it is further ordered that the complaint be, and it hereby is, dismissed, insofar as it alleges (1) that the Respondents violated Section 8 (1) of the

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shall be inserted in the notice, before the words, "A Decision and Order," the words, "Decree of the United States Court of Appeals Enforcing."

Act by making "bonus" payments, by interrogating employees with respect to their union membership and affiliation, or by threatening employees that they would never work again in the motion picture industry if they refused to perform the work of striking employees; (2) that Warner Bros. Pictures, Inc., discriminated against H. C. MacDonald; and (3) that Republic Productions, Inc., Los Angeles, California; Twentieth Century-Fox Film Corporation, Los Angeles, California, and RKO Radio Pictures, Inc., Los Angeles, California, committed any unfair labor practices.

Signed at Washington, D. C., this 31st day of March, 1949.

PAUL M. HERZOG,  
Chairman.

JOHN M. HOUSTON,  
Member.

ABE MURDOCK,  
Member.

J. COPELAND GRAY,  
Member.

[Seal]

NATIONAL LABOR RELATIONS BOARD.

## APPENDIX A

### Notice to All Employees

#### Pursuant to a Decision and Order

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We will not interfere with, restrain, or coerce our employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any and all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the Act, as guaranteed by Section 7 thereof, by discharging or refusing to reinstate any of our employees, or in any other manner discriminating in regard to their hire or tenure of employment, or any term or condition of their employment, because of their participation in concerted activities for their mutual aid or protection, or by any like or related conduct.

We will offer to the employees named below, immediate and full reinstatement to their former or substantially equivalent positions, without preju-



dice to any seniority or other rights and privileges previously enjoyed.

Kenneth B. Coffey	Charles J. Larson
Paul De Sanctis	Fred Seward
John G. Goudie	William J. Simpson
Willis F. Howe	William G. White

We will make the following employees whole for any loss of pay suffered as a result of the discrimination against them, in accordance with the Order of the National Labor Relations Board.

Lynn George Batchelder	Raymond M. Lora
Robert N. Bonning	Donald MacKellar
Paul De Sanctis	Jesse L. Sapp
Kenneth B. Coffey	J. Harold Rogers
Carl H. Gidlund	Fred Seward
George M. Hand	William J. Simpson
Willis F. Howe	Paul L. Stanley
Charles Jensen	George Stoica, Jr.
Leo Leonard Lamb	William G. White

WARNER BROS. PICTURES, INC.  
(Employer)

Dated.....

By.....

(Representative) (Title)

This notice must remain posted for 60 days from the date thereof, and must not be altered, defaced, or covered by any other material.



## APPENDIX B

### Notice to All Employees

#### Pursuant to a Decision and Order

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We will not interfere with, restrain, or coerce our employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any and all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the Act, as guaranteed by Section 7 thereof, by discharging or refusing to reinstate any of our employees, or in any other manner discriminating in regard to their hire or tenure of employment, or any term or condition of their employment, because of their participation in concerted activities for their mutual aid or protection, or by any like or related conduct.

We will offer to the employee named below, immediate and full reinstatement to his former or a substantially equivalent position, without prejudice

to any seniority or other rights and privileges previously enjoyed.

Joseph P. Cuccia

We will make the following employees whole for any loss of pay suffered as a result of the discrimination against them, in accordance with the Order of the National Labor Relations Board.

Joseph P. Cuccia

Irwin P. Hentschel

COLUMBIA PICTURES CORPORATION,  
(Employer)

Dated.....

By .....  
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

## APPENDIX C

### Notice to All Employees

#### Pursuant to a Decision and Order

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We will not interfere with, restrain, or coerce our employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any and all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the Act, as guaranteed by Section 7 thereof, by discharging or refusing to reinstate any of our employees, or in any other manner discriminating in regard to their hire or tenure of employment, or any term or condition of their employment, because of their participation in concerted activities for their mutual aid or protection, or by any like or related conduct.

We will offer to the employee named below, immediate and full reinstatement to his former or a substantially equivalent position, without prejudice

to any seniority or other rights and privileges previously enjoyed.

John L. Selgrath

We will make the following employees whole for any loss of pay suffered as a result of the discrimination against them, in accordance with the Order of the National Labor Relations Board.

George I. Groth

John L. Selgrath

LOEW'S INCORPORATED,  
(Employer)

Dated.....

By.....  
(Representative) (Title)

This notice must remain posted for 60 days from the date thereof, and must not be altered, defaced, or covered by any other material.

## APPENDIX D

### Notice to Our Members and Their Employees Pursuant to a Decision and Order

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our members and their employees that:

We will not advise, urge, or otherwise influence our member producers, directly or indirectly, to in-

terfere with, restrain, or coerce their employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any and all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the Act, as guaranteed by Section 7 thereof, by discharging or refusing to reinstate any of their employees, or in any other manner discriminating in regard to their hire or tenure of employment, or any term or condition of their employment, because of their participation in concerted activities for their mutual aid or protection, or by any like or related conduct.

ASSOCIATION OF MOTION  
PICTURE PRODUCERS, INC.

(Employer)

Dated.....

By.....

(Representative)      (Title)

This notice must remain posted for 60 days from the date thereof, and must not be altered, defaced, or covered by any other material.



United States of America Before the National Labor  
Relations Board Trial Examining Division,  
Washington, D. C.

Case No. 21-C-2505

In the Matter of

COLUMBIA PICTURES CORPORATION and  
ASSOCIATION OF MOTION PICTURE  
PRODUCERS, INC.,

and

JOSEPH CUCCIA

Case No. 21-C-2562

In the Matter of

COLUMBIA PICTURES CORPORATION and  
ASSOCIATION OF MOTION PICTURE  
PRODUCERS, INC.,

and

IRWIN P. HENTSCHEL

Case No. 21-C-2563

In the Matter of

REPUBLIC PRODUCTIONS, INC., and ASSO-  
CIATION OF MOTION PICTURE PRO-  
DUCERS, INC.,

and

ROBERT AMES

Case No. 21-C-2564

In the Matter of

WARNER BROS. PICTURES, INC. and ASSO-  
CIATION OF MOTION PICTURE PRO-  
DUCERS, INC.,

and

L. G. BATCHELDER, PAUL DeSANCTIS,  
CARL H. GIDLUND, G. M. HAND, CHAS.  
JENSEN, LEO LAMB, R. M. LORA, H. C.  
MacDONALD, DON MacKELLAR, W. J.  
SIMPSON, GEORGE STOICA, ROBERT  
BONNING, W. G. WHITE, JESSE L.  
SAPP, J. C. GOUDIE, CHAS. J. LARSON,  
FRED SEWARD, B. KENNETH COFFEY  
and WILLIS HOWE.

Case No. 21-C-2660

In the Matter of

WARNER BROS. PICTURES, INC., and ASSO-  
CIATION OF MOTION PICTURE PRO-  
DUCERS, INC.,

and

J. HAROLD ROGERS

Case No. 21-C-2662

In the Matter of

LOEW'S INCORPORATED and ASSOCIATION  
OF MOTION PICTURE PRODUCERS,  
INC.,

and

GEORGE I. GROTH and ROBERT L. SEL-  
GRATH

Case No. 21-C-2664

In the Matter of

TWENTIETH CENTURY-FOX FILM COR-  
PORATION and ASSOCIATION OF MO-  
TION PICTURE PRODUCERS, INC.,

and

EUGENE V. MAILES

Case No. 21-C-2665

In the Matter of

RKO RADIO PICTURES, INC., and ASSOCIA-  
TION OF MOTION PICTURE PRODUC-  
ERS, INC.,

and

FORREST McLONEY

MR. ROBERT RISSMAN,

For the Board.

O'MELVENY & MYERS, by

MR. HOMER I. MITCHELL and

MR. W. W. ALSUP,

Of Los Angeles, Calif.,

For the respondents Columbia Pictures  
Corporation, Republic Productions, Inc.,

Warner Bros. Pictures, Inc., Loew's Incorporated, Twentieth Century-Fox Film Corporation, RKO Radio Pictures, Inc., and Association of Motion Picture Producers, Inc.

KATZ GALLAGHER and MARGOLIS, by  
BEN MARGOLIS, of Los Angeles, Calif.,

For individual complainants Robert W. Ames, G. M. Hand, Irwin P. Hentschel, Charles Jensen, Leo J. Lamb, R. M. Lora, Eugene V. H. Mailes, Jesse L. Sapp, John L. Selgrath, George Stoica, Jr., and W. G. White.

BODKIN, BRESLIN & LUDDY, by  
MICHAEL G. LUDDY  
Of Los Angeles, Calif.,

For the Intervenor Alliance.

## INTERMEDIATE REPORT

### Statement of the Case

Upon various charges duly filed between April 6, 1945, and July 19, 1946, by certain named individuals, the National Labor Relations Board, herein called the Board, by its Regional Director for the Twenty-first Region (Los Angeles, California), issued its consolidated complaint dated July 19, 1946, against Columbia Pictures Corporation, herein called respondent Columbia; Republic Productions, Inc., herein called respondent Republic;

Warner Bros. Pictures, Inc., herein called respondent Warner; Loew's Incorporated, herein called respondent Loew; Twentieth Century-Fox Film Corporation, herein called respondent Twentieth Century; RKO Radio Pictures, Inc., herein called respondent RKO; Paramount Pictures, Inc., herein called Paramount; Universal Pictures Company, Inc., herein called Universal; Samuel Goldwyn Productions, Inc., herein called Goldwyn; Hal Roach Studios, Inc., herein called Roach; and Association of Motion Picture Producers, Inc., herein called respondent Association; alleging that the foregoing had engaged in unfair labor practices within the meaning of Section 8 (1), (3), and (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act.

By motion dated August 16, 1946, respondents Association, Columbia, Republic, Warner, Loew, Twentieth Century, and RKO, and Paramount, Universal, Goldwyn, and Roach moved to sever Matter of The Association of Motion Picture Producers, Inc., one of the consolidated cases,<sup>1</sup> from the other consolidated cases named in the caption above. The Board by order dated August 30, 1946, granted the

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<sup>1</sup>The full title is: In the Matter of Association of Motion Picture Producers, Inc.; Paramount Pictures, Inc.; Warner Bros. Pictures, Inc.; Loew's Incorporated; Universal Pictures Company, Inc.; R.K.O. Radio Pictures, Inc.; Columbia Pictures Corporation; Samuel Goldwyn Productions, Inc.; Republic Productions, Inc.; Hal E. Roach Studio, Inc.; and Twentieth Century-Fox Film Corporation and International Association of Machinists, Lodge 1185, Case No. 21-C-2735. This case involves alleged violations of Sections 8 (1), (3) and (5) of the Act.



said motion and directed that the Machinists case proceed to hearing prior to the hearing in the above consolidated cases. On September 3, 1946, the Board through its Regional Director issued an amended consolidated complaint covering the other consolidated cases, copies of which were duly served upon the respondents.

The amended consolidated complaint alleged in substance that: (1) the respondent Association is an employer within the meaning of the Act; (2) respondents Columbia, Republic, Warner and Loew on certain dates between March 12, 1945 and October 31, 1945, discharged and/or refused to reinstate certain named employees because the said employees refused to perform the work and take the jobs of other striking employees or pass a picket line, during the course of a strike in the motion picture industry, current between March 12 and October 31, 1945; respondents Twentieth Century and RKO refused on the termination of the strike, to reinstate certain named employees because the said employees refused to pass the picket line during the course of the said strike; (3) the respondent Association, on or about October 31, 1945, advised and instructed the respondent Producers<sup>2</sup> not to reinstate or hire employees who refused to cross picket lines during the strike and further advised the said respondents to lay off any such persons if they had been reinstated or employed; (4) respondents paid bonuses to employees who passed the picket lines or performed

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<sup>2</sup>Respondent Producers when used hereafter refers collectively to respondents Columbia, Republic, Warner, Loew, Twentieth Century and RKO.

the work of striking employees during the strike referred to; threatened employees that they would never work in the motion picture industry again if they refused to perform the work or take the jobs of striking employees; and interrogated employees with respect to their union membership and affiliation. and (5) by reason of all the foregoing the respondents and each of them engaged in violations of Section 8(1) and (3) of the Act and by these acts and conduct interfered with, restrained, and coerced their employees in the exercise of rights guaranteed in Section 7 of the Act.

The respondents filed an answer on September 16, 1946, which admitted certain factual matters concerning the jurisdictional allegations of the complaint. It denied that respondent Association was an employer within the meaning of the Act. The answer set forth that: the strike of March 12, 1945, was called by Screen Set Designers, Illustrators & Decorators, Local 1421, of the International Brotherhood of Painters, Decorators, and Paperhangers of America, affiliated with the American Federation of Labor, herein called Local 1421; prior to the calling of the said strike, both Local 1421 and Local 44 of the International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, affiliated with the American Federation of Labor,<sup>3</sup> herein called Local 44, had presented con-

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<sup>3</sup>Hereafter the International Union will be referred to as the Alliance.

flicting claims as to the appropriate unit in which set decorators should be included for the purposes of collective bargaining; because of the conflicting claims the respondent Producers on February 27, 1945, filed an employer's representation petition and in the course of a hearing thereon on March 12, 1945, Local 1421 called a strike against respondent Producers for the purpose of forcing them to recognize Local 1421 as collective bargaining representative of the set decorators. The answer denied the discriminatory discharge or refusal to reinstate any of the individual complainants. It averred that by virtue of closed shop contracts between respondent Producers and the Alliance and its locals, the Producers could not reinstate employees expelled from membership therein. Other defenses will be discussed hereafter in considering the cases of the individual complainants.

Pursuant to notice, a hearing was held at Los Angeles, California, on September 16, 1946, and from September 24 to October 10, 1946, before Mortimer Riemer, the undersigned Trial Examiner, duly designated by the Chief Trial Examiner. On the second day of the hearing, the Alliance moved to intervene in the proceedings.<sup>4</sup> The motion to intervene

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<sup>4</sup>In its brief the Alliance states that it "intervened in these proceedings because it has a vital interest in avoiding any decision which would directly or indirectly review the disciplinary proceedings taken by it against such of its former members as are parties to these proceedings and in preventing a decision which would frustrate directly or indirectly such proceedings and the orders of the in-

was granted. At the conclusion of the Board's case, an appearance was noted on behalf of certain individual complainants named in this proceeding. The Board, the respondents, the Alliance and certain individuals were represented by counsel and all participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses and to introduce evidence bearing on the issues was afforded all the parties.

At the outset of the hearing, counsel for the respondents moved to strike that portion of the amended consolidated complaint wherein it was alleged that respondent Association advised and instructed the other respondents not to reinstate or hire employees who refused to cross the picket lines during the strike and to lay off any such persons if reinstated, on the ground that no charge had been filed upon which the said allegation was based. It was also moved for the same reason, to strike that portion of the amended consolidated complaint which alleged that respondents paid a bonus to employees who passed the picket lines or performed the work of striking employees; threatened employees that they would never work in the motion picture industry again if they refused to perform the work of strikers and interrogated employees with respect to their union affiliation, or in the alter-

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ternational President which were disobeyed not only by such expelled persons but by other members, parties to these proceedings, against whom disciplinary action was not taken."



native, that this portion of the complaint be made more definite and certain or a bill of particulars be ordered. The motions to strike for the above-stated reason were denied. The motion in the alternative for a bill of particulars was granted in part and counsel for the Board was directed to furnish the particulars as ordered.

Counsel for the Board moved to strike those portions of the respondents, answer setting forth facts pertaining to the cause of the strike of March 12, 1945. This motion was denied. On the third day of the hearing counsel for the Board furnished an oral bill of particulars to the respondents in conformity to the undersigned's ruling. With respect to that portion of the amended consolidated complaint which alleged that the respondents had interrogated employees with respect to their union membership and affiliation, it was stated that there had been no interrogation and that counsel would move to dismiss if not proven. No further proof was adduced in support of this allegation and it will be recommended hereinafter that this allegation be dismissed.

The respondents filed an amendment to the answer, to the effect that on or about June 14, 1946, respondent Warner was notified of the expulsion in some instances, and suspension in other instances, from the Alliance, of certain named individual complainants at one time employed by it and that pursuant to contracts in effect between the Alliance and Local 44, and respondent Warner, only em-



ployees who were members in good standing of both the Alliance and Local 44 could be employed in job classifications covered by the contracts. At the close of its case, counsel for the Board moved to dismiss the allegations of the complaint that the respondent Warner on March 19, 1945, discharged H. C. MacDonald, and that respondent RKO had refused and failed to reinstate Forrest McLoney. Both motions were granted.

During the presentation of the respondents' defense, counsel for the respondents called to the attention of the parties, the fact that the third amended charge on which the complaint was issued in Case No. 21-C-2564,<sup>5</sup> did not contain the names of Kenneth B. Coffey, Willis F. Howe and Paul L. Stanley.<sup>6</sup> Later during the course of the hearing counsel for the respondents asked to be relieved from the stipulation previously entered into with the Board to the effect that a charge had been filed containing the names of Coffey, Howe, and another individual, Fred Seward. The stipulation did not cover Stanley. Thereupon the counsel for the respondents moved that the complaint be dismissed with respect to Coffey, Howe, Seward and Stanley on the ground that the portions of the complaint alleging discrimination with respect to the named in-

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<sup>5</sup>Matter of Warner Bros. Pictures, Inc., and Association of Motion Picture Producers, Inc., et al.

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<sup>6</sup>The undersigned has adopted for use herein the spelling of names as given at the hearing and pursuant to the motion to conform, such spelling is used hereafter.

dividuals was not based on any charge filed by or on behalf of the said persons. Ruling on the motion was reserved pending an investigation of Board files and a report at the hearing by counsel for the Board. Without waiving its defense, respondents proceeded to a conclusion of its defense of discrimination with respect to these individuals.

On the final day of the hearing counsel for the Board disclosed that there was no official entry in the Board's Regional Office of a charge containing the names of Coffey, Howe and Seward. He stated that a charge had been presented to the Regional office by Ben Margolis, on behalf of the named individuals, on or about January 4, 1946, but that no explanation could be offered to explain why a filing date had not been placed up on the charge received by the Regional Office. As to the complainant, Stanley, counsel for the Board admitted that Stanley was not named in any charge and no explanation could be given for the failure to include Stanley's name. Whereupon counsel for the respondents renewed the motion to dismiss with respect to Stanley on the ground that no charge had either been filed or presented to the Regional Office and moved similarly with respect to Coffey, Howe and Seward on the ground that no charge had been filed and served upon the respondents. He admitted, however, that he had discussed with a Board Field Examiner the alleged discrimination against Coffey, Howe, and Seward but did not know at that time whether

charges had been filed. The motions to dismiss were denied.<sup>7</sup>

At the conclusion of the hearing, the Board moved to conform the pleadings to the proof with respect to such matters as dates, spelling of names, and similar items. Over the objections of counsel for the respondents, the motion was granted. All counsel were offered an opportunity to present oral argument but indicated a preference and a desire to file briefs. A time was fixed for the filing of briefs and after extensions of time were granted, briefs were submitted by counsel for the Board, the respondents and the Alliance.

Upon the entire record in the case and from his observation of the witnesses, the undersigned makes the following:

### Findings of Fact

#### 1. The Business of the Respondents.

Columbia Pictures Corporation, herein called respondent Columbia, a New York corporation having its principal office and place of business in New York City, is engaged in the manufacture of motion pictures. It distributes motion pictures which it produces, though some of its pictures are distributed by foreign distributing companies and licencees. It holds the stock of various foreign distributing com-

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<sup>7</sup>Counsel for the individual complainants moved to amend the third amended charge by inserting in the said charge the names of the above individuals. This motion was denied.

panies and of the following subsidiary corporations: Screen Gems, Inc., a California corporation and Columbia Pictures Corp. of Louisiana, Inc., a Louisiana corporation. During 1943, respondent Columbia purchased approximately 106,000,000 feet of film from vendors located in the City of Los Angeles, and expended approximately \$13,600,000 in the production of motion pictures. For the 1942-1943 season, respondent Columbia produced 37 feature length motion pictures and made approximately 6,300 prints of these pictures, of which approximately 5,810 were shipped to points outside the State of California. Respondent Columbia also produced, for use during the same season, 28 short subjects, and made approximately 2,900 prints of these pictures, of which approximately 2,744 were shipped to points outside the State of California. The prints and pictures hereinabove described were distributed by respondent Columbia through its office in New York City.

Republic Productions, Inc., herein called respondent Republic, a New York corporation with its principal office located in New York City, operates studios for the production of motion pictures in the City of Los Angeles, California. It manufactures currently in excess of 30 feature length motion pictures per year. The pictures are distributed throughout the United States and foreign countries.

Warner Bros. Pictures, Inc., herein called respondent Warner, is a Delaware corporation whose principal office and place of business is located in



New York City. Its principal studio is located at Burbank, California, where it employs more than 3,000 employees, not including those employed on a daily basis. It distributes motion pictures through Vitagraph, Inc., a subsidiary corporation, which maintains exchanges in 31 cities throughout the United States. Respondent Warner usually produces more than 30 feature length pictures each year at its Burbank studio. During the fiscal year ending August 27, 1943, it expended more than \$19,000,000 on the production of motion pictures. Some of the prints of its pictures are printed in California, but others are printed in New York from master negatives shipped from California for the purpose of printing and distribution. Pictures are distributed throughout the United States and foreign countries.

Loew's Incorporated, herein called respondent Loew, a Delaware corporation, engaged in the business of producing and distributing motion pictures, and whose principal office is located in New York City, operates studios located at Culver City, California. During the course of each calendar year, the respondent Loew produces more than 30 feature length motion pictures, and a number of cartoons and short subjects. It causes the prints of these pictures to be distributed throughout the United States and various foreign countries. The respondent Loew employs many thousands of employees, both in the State of California and in the State of New York.



Twentieth Century-Fox Film Corporation, herein called respondent Twentieth Century, is a New York corporation engaged in the production and distribution of motion pictures, having its principal place of business in New York City and also maintaining a place of business in the City of Los Angeles, California. Various subsidiary corporations distribute its motion pictures in foreign countries. During the fiscal year of 1943, respondent Twentieth Century purchased several million feet of positive and negative film, the greater proportion of which was purchased within the State of California from suppliers who obtained the film from sources outside the State of California. During the same period, it expended more than \$20,000,000 in the production of motion pictures, produced approximately 40 feature length pictures and caused more than 10,000 prints to be made of all its pictures. It employs approximately 3,500 production employees in its studios at Los Angeles.

RKO Radio Pictures, Inc., herein called respondent RKO, a Delaware corporation having its principal office in New York City, operates a studio for the production of motion pictures in the City of Los Angeles, California. It manufactures currently in excess of 30 feature length motion pictures per year. The pictures so manufactured are distributed throughout the United States and foreign countries.

The Association of Motion Picture Producers, Inc., herein referred to as respondent Association, is now and has been at all times since January 18,

1924, a corporation organized under and existing by virtue of the laws of the State of California, having its principal office and place of business in the City of Los Angeles, California. The Association is a non-profit corporation organized for the following purposes: "To assist in fostering the common interests of those engaged in the motion picture industry in the United States, and especially in the State of California, by establishing and maintaining the highest possible moral and artistic standards in motion picture production, by developing the educational as well as the entertainment value and general usefulness of the motion picture, by diffusing accurate and reliable information with reference to the industry, by reforming abuses relative to the industry, by securing freedom from unjust or unlawful exactions, and by other lawful and proper means."

In promoting and furthering the aforesaid purposes and in the interest of its members, including each of the respondents named in this amended consolidated complaint, the Association permits certain of its employees to perform services for members of the Association as individual entities and the said employees on behalf of the members of the Association engaged in and now engage in the following activities: (a) the ascertainment of facts pertaining to wages, hours, and working conditions in the motion picture industry; (b) the analysis and dissemination of information so obtained; (c) the representation of members of the said Association

as individual entities and each of the respondents named herein, in their respective labor relations with their employees and in collective bargaining negotiations and adjustment of labor disputes; (d) the representation of members of the Association before the Board, its agents and various other governmental advisory or arbitration commissions or bodies; and (e) in general to advise, instruct and confer with members of the Association on matters pertaining to their employer-employee relations.<sup>8</sup>

## II.

### The Organizations Involved

International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, Local 44, Local 80, Local 727 and Local 728, affiliated with the American Federation of Labor, are labor organizations admitting to membership employees of the respondent Producers.

## III.

### The Unfair Labor Practices

A. Is the Association an employer within the meaning of the Act.

The answer avers that while the Association permits certain of its employees to perform labor serv-

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<sup>8</sup>The above findings concerning the business of the respondent Producers and the Association are based upon the allegations of the complaint and admissions contained in the answer.

ices for members of the Association, as for example, the representation of members in collective bargaining negotiations and adjustment of labor disputes, these activities are undertaken pursuant to the direction of the Respondent Producer and not pursuant to the direction of the Association. A more detailed analysis of the record therefore, is in order, to determine whether this distinction is such as to exclude the Association as an employer within the meaning of the Act.<sup>9</sup>

In 1928, Pat Casey was chosen chairman of the Producers Committee, a committee of the New York presidents of the major Producers.<sup>10</sup> The major Producers are members of the Association. The Producers Committee delegated to Casey authority to act on its behalf in negotiating contracts with the Unions operating in Hollywood. As the complexities of the West Coast situation developed,

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<sup>9</sup>Section 2 of the Act defines an employer as follows: "The term 'employer' includes any person acting in the interest of an employer, directly or indirectly, but shall not include the United States, or any State or political subdivision thereof, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization."

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<sup>10</sup>The so-called major Producers include respondents Columbia, Republic, Warner, Loew, Twentieth Century, RKO and Paramount Pictures, Inc., Universal Pictures Company Inc., Samuel Goldwyn Productions, Inc., and Hal Roach Studios, Inc.

Casey sought without success to keep negotiations in New York with the International heads of the Unions, separate from the problems which arose on a local basis in Hollywood. Sometime in 1939, Fred E. Pelton was engaged by the Producers Labor Committee, herein called the Labor Committee, to handle the Hollywood end of the negotiations. The Labor Committee is a committee appointed by the major Producers who are members of the Association and the committee acts for all members of the Association in their labor matters.

When Pelton was hired by the Labor Committee, it consisted of the representatives of Paramount Pictures, Inc., and respondents Loew and Columbia. Pelton is known as the Producers Labor Administrator and works as a team with Casey in the preparation and negotiation of contracts, on behalf of the Labor Committee for the 10 major Producers. Pelton is directly responsible to the chairman of the Labor Committee for the execution of whatever contracts the Labor Committee negotiates. His salary is paid by the Association, to which the Producers represented by the Labor Committee, belong. He testified that the Association and its officers had no authority over him and that he drew all his authority from the Labor Committee. During the strike, Pelton conferred with member representatives concerning the strike, issuing bulletins, and decisions of the Labor Committee. He received instructions at this time from the Chairman of the Labor Committee, B. B. Kahane, vice president of



respondent Columbia. One of Kahane's instructions, issued over Pelton's signature on October 31, 1945, was sent to all of the respondent Producers and directed them to refuse to reinstate members of the Alliance who refused to work during the strike.

In further support of the Board's contention that the Association was an employer, acting for and on behalf of its members, the respondent Producers, the Board offered in evidence, copies of notices appearing in *Daily Variety*, a trade paper, during the week following the onset of the strike. In these statements published over the name of the Association, and addressed to the employees of the motion picture industry, the Association spoke on behalf of its members and set forth certain facts concerning the 'jurisdictional quarrel' which had precipitated the strike. One advertisement stated that "our studios are crippled" and published facts which it asked the employees to consider. The Association pledged that its member Producers would abide by decisions of the Board, and recognize and bargain with any union certified by the Board.

Upon the basis of the facts admitted in the respondents' answer considered together with the testimony of Casey and Pelton, the undersigned is not convinced that a valid distinction has been drawn between the acts of Pelton as a labor administrator acting for and on behalf of the Labor Committee and the interests of the Association in the work of that committee. The Labor Committee is designated

by the Producers who are members of the Association. Pelton's salary is paid by the Association. His office is in the Association's building. Unions submit their proposals to Producers by sending them to Pelton as labor administrator at his office in the Association building. The undersigned is not persuaded by the distinction sought to be drawn by the respondents, that because Pelton works under direction of and handles employer-employee relations for the Labor Committee, that thereby the Association, whose members designated the Labor Committee, can be said to have divorced itself from its activities and hence cannot be found to be an employer within the meaning of the Act. The distinction is too subtle and lacks substance. The Labor Committee is appointed by members of the Association and acts for all Association members on labor matters. Realistically, it must be conceded, in the undersigned's opinion, that when the Labor Committee acts on behalf of the Producers who are Association members, the committee is taking a stand and advancing a position which is that of the Association and there can be no valid distinction between the Association as such and the activities of its members. In this connection, Jack Baker, respondent Republic's production manager, testified that its business manager "handles labor negotiations and . . . represents us at meetings with the Association and interprets all union contracts." The undersigned is of the opinion that the Association is an employer within the meaning of the Act. It is so found.

B. The contracts and start of the strike of March 12, 1945.

On April 17, 1944, at New York City, a basic agreement retroactive to January 1, 1944, was executed by and between the Alliance and respondents Columbia, Loew, Republic, RKO, Twentieth Century, and Warner. The Alliance executed the agreement on behalf of employee members of its West Coast locals employed at the studios of the respondent Producers.<sup>11</sup> The basic agreement provides in part as follows:

Whereas, The International Alliance represents that the majority of the employees of the Producers and each of them, in the crafts and classifications of work described in Paragraphs III and IV hereof (all of said crafts and classifications of work constituting an indivisible and integral bargaining

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<sup>11</sup>The West Coast locals of the Alliance are named in the basic agreement as follows: Affiliated Property Craftsmen, Local No. 44; Motion Picture Studio Grips, Local No. 80; Motion Picture Studio Projectionists, Local No. 165; International Photographers of the Motion Picture Industries, Local No. 659; Film Technicians of the Motion Picture Industry, Local No. 683; International Sound Technicians of the Motion Picture, Broadcast and Amusement Industry, Local No. 695; Motion Picture Costumers, Local No. 705; Make-Up Artists and Hair Stylists, Local No. 706; Motion Picture Studio Laborers and Utility Workers, Local No. 727; Studio Electrical Technicians, Local No. 728; and Motion Picture Studio First Aid Employees, Local No. 767. Local Nos. 44, 80, 727, and 728 are concerned in this proceeding.

unit), are members of the International Alliance and of one or more of its said West Coast Studio Locals:

Now, therefore, in consideration of the mutual covenants, conditions and agreements herein contained, the parties covenant and agree as follows:

## I. Term of Agreement

The term of this agreement shall be from January 1, 1944 until August 10, 1949, provided, however, that either party may, by written notice given on or before July 15, 1945 and on or before July 15, 1947, request renegotiation of the "Wage Scales, House, of Employment and Working Conditions" of the West Coast Studio Locals . . .

## II. Shop Agreement

The Producers severally promise and agree that each and all of their respective employees now or hereafter working in the studios of the Producers in the crafts and classifications of work described in Paragraphs III and IV hereof shall at all times be members in good standing of the International Alliance.

The Producers severally promise and agree during the term of this agreement to employ within the crafts and classifications of work herein described only those workers who are members in good standing of the International Alliance.

The International Alliance promises and agrees to furnish competent men to perform the work and



render the services required by the Producers under the provisions of this agreement, and the agreements referred to in Paragraph IV hereof at such rates and under such conditions as are therein provided for and in accordance with the provisions of said agreements.

### III. Scope of Agreement

The crafts and classifications of work subject to this agreement are the crafts and classifications described in the agreements referred to in Paragraph IV of this agreement, and such other crafts and classifications of work in which the Producers shall hereafter recognize the International Alliance as the collective bargaining agent of the employees, or in which the International Alliance shall be designated by the National Labor Relations Board as the collective bargaining agent of the employees.

### IV. Wage Scales—Hours of Employment—Working Conditions

The wage scales, hours of employment and working conditions applicable to employees in the crafts and classifications of work subject to this agreement shall be those contained in agreements between the Producers on the one hand, and the International Alliance and the respective locals on the other hand, entered into concurrently herewith or which may hereafter be entered into pursuant to Paragraph I hereof, with respect to such wage scales, hours of employment and working conditions in the crafts



and classifications of work described in those agreements.

## V. Bargaining Agency

It is hereby agreed between and among the parties hereto that all of the crafts and classifications of work set forth in the agreements referred to in Paragraph's III and IV hereof constitute during the term of this agreement, an indivisible and integral bargaining unit of which the International Alliance shall during the term of this agreement, act as and be the collective bargaining agency.

Concurrently with the execution of the 1944 basic agreement, there was executed between the same respondent Producers and the Alliance, wage scales and working conditions for Affiliated Property Craftsmen, Local 44; the studio grips, Local 80; the studio laborers, Local 727; and the studio electrical technicians, Local 728. The wage scales were signed by Richard F. Walsh, International President of the Alliance, representatives of the local involved and the Producers' representatives. The Local contracts were, like the 1944 basic agreement, effective as of January 1, 1944. Each of the Local contracts is a technical and specialized form of agreement covering studio working conditions, with numerous clauses dealing with situations peculiar to the motion picture industry. These contracts provide also that in the event any "jurisdictional dispute arises between the Union and any other Union, the subject matter shall be referred to the

respective International Presidents for adjustment."

On March 12, 1945, a strike was called by Local 1421, of the Painters Union. Local 1421, was at that time affiliated with the Conference of Studio Unions, an association of local unions which numbered among its members, in addition, Local 946 of the Carpenters Union, Lodge 1185 of the International Association of Machinists and Local 644 of the Painters Union. During the course of the strike, the Painters, Carpenters, Machinists and other members of the Conference refused to work and picket lines were established around the studios of the respondent Producers.

The day the strike started President Walsh of the Alliance, sent B. C. "Cappy" DuVal, business representative of Local 44, the following telegram:

I have been informed that picket lines have been established around the Hollywood Motion Picture Studios. You are hereby advised that these picket lines are in direct opposition to the best interests of the general membership of the I. A. T. S. E. Therefore instruct your members that they must not in any manner whatsoever violate the Constitution and By-laws of the International Alliance by refusing to pass through these picket lines or to refuse to render service because of them.

On or about the same time Walsh wrote Edwin T. Hill, secretary of Local 44, the following letter:

Many rumors concerning the establishment of picket lines at the Hollywood Studios have reached

this office. So that there will be no misunderstanding as to our members honoring these picket lines, this is to notify your local union that before any members of our local unions refuse to go through these picket lines or refuse to render service, you are instructed to contact this office in order to ascertain if these picket lines are considered legitimate by us.

It must be understood by your local and the membership thereof that the product being produced in these studios bears the label of the I. A. T. S. E. and it is the duty of the General Office to protect that label for the best interests of the entire membership of the Alliance.

At some later date copies of the telegram and letter were sent to members of Local 44. At this time the Alliance had about 10,000 members working in the Hollywood Studios of whom about 1500 belonged to Local 44.

On Sunday, March 18, 1945, Walsh addressed a meeting of Alliance members at the Hollywood Women's Club. Walsh stated that the strike of Local 1421 was a strike against the Alliance and called for the purpose of destroying the influence and position of the Alliance in the studios. Walsh pointed out that the Alliance had organized the motion picture industry and up to sometime in 1919 had enjoyed complete jurisdiction, when the Carpenters Union entered the field, taking over some of the jurisdiction of the Alliance. This created the first open jurisdictional conflict between the Al-

liance and the Carpenters Union. According to Walsh in the period between 1919 and 1933 open shop conditions prevailed in the industry.

As a result of a strike in 1933, the membership of the Alliance dropped to about 165 members because members of the Carpenters Union and the International Brotherhood of Electrical Workers had taken the jobs vacated by striking members of the Alliance. Walsh compared the 1945 strike to the 1933 conditions and foresaw dangers that would result to the Alliance if the membership did not respond to Walsh's request that he was making to them, to keep the studios open. Walsh claimed that jurisdictional issues were at the base of the dispute and that Local 1421 wanted to take over the jurisdiction of the Alliance.

Walsh urged that it was of primary importance to keep the studios in operation; for in the event they were closed the groups represented by the Conference of Studio Unions would then be in a position to dictate the terms on which the strike would close. Walsh argued that the Carpenters Union was determined to control the work which in part was being performed by members of Local 44 and from the Alliance's point of view it was impractical to have set decorators come under the jurisdiction of any other union than the Alliance. Walsh claimed similarly that the Painters Union was engaged in aggressive acts designed to take jurisdiction away from locals of the Alliance. Walsh concluded his lengthy address by stating that the studios had to be kept open and if they were not, the entire juris-

diction of the Alliance would be placed in jeopardy. He ordered Alliance members to do whatever they were required to do in order to keep the studios in operation, for as long as other unions had gone out on strike in violation of their jurisdictional agreements with the Alliance, these acts had canceled any obligation on the part of the Alliance to respect their jurisdiction. Therefore, Walsh ordered all crafts of the Alliance to cross jurisdictional lines insofar as it was necessary in order to keep the studios in operation and Alliance members to do everything that they were requested to do by the Studios, except work in the jurisdiction of those unions that were respecting their contracts and were remaining at work. In response to requests made from the floor that Walsh put his orders in writing, there was subsequently addressed to all members of Alliance studio locals a letter, dated March 19, 1945, which read in part as follows:

This is to officially advise you that until the end of the emergency, created by the unauthorized strike of Painters Union No. 1421, members of I. A. T. S. E. Studio Locals, are not to observe any trade jurisdictional lines in the studios.

This letter, however, is not to be considered an authorization for any member to work in the jurisdiction of any Local Union whose members are observing their no-strike pledge, and are fulfilling their contractual obligations in the studios.<sup>12</sup>

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<sup>12</sup>The above findings concerning the remarks made by Walsh at the Hollywood Women's Club are based



C. Employee conduct during the course of the strike.

Although the strike and the employees' attitude toward the strike furnishes a rather uniform pattern, nonetheless differences exist which make it desirable to present the case of each individual in connection with applicable studio practices. The individual cases will therefore be discussed and resolved with an analysis in each instance of the causes which led up to the termination of employment. Later portions of the report will deal with the problems of back pay and reinstatement in those cases where such recommendations are appropriate.

1. Respondent Warner—Case No. 21-C-2564.

The amended consolidated complaint alleged that respondent Warner on or about March 19, 1945, discharged J. Harold Rogers, Lynn G. Batchelder, Paul DeSanctis, Carl H. Gidlund, George M. Hand, Charles Jensen, Leo L. Lamb, Raymond M. Lora, H. C. MacDonald, Donald MacKellar, William J. Simpson, George Stoica, Jr., Robert N. Bonning, William G. White, and Jesse L. Sapp, for the reason that each of them refused to perform the work and take the jobs of striking employees.

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upon the testimony of Roy M. Brewer, International representative of the Alliance who was present. Numerous other witnesses testified concerning Walsh's remarks but the clearest exposition is contained in the testimony of Brewer and the undersigned has accepted it. Furthermore, the speech of Walsh sets forth to some extent the background of the situation at the time the strike was called.

All the foregoing employees were, at the time of the strike, members of Local 44 of the Alliance, employed in respondent Warner's prop shop.<sup>13</sup> The respondents' answer acknowledges that on March 19, the named employees were given notices that they were being placed off pay roll for the reason, "Refused To Do Carpenter Work," as directed by respondent Warner. Respondents' brief admitted the foregoing employees were "discharged."

Certain preliminary observations on matters common to the Warner cases will be made first before taking up each alleged discrimination. These employees worked on Saturday, March 10, 1945, but did not come to work on Monday or Tuesday, March 12 and 13. Aside from William J. Simpson, who worked throughout the week of March 12 the failure of the others to report to work on March 12 and 13, was apparently due to the presence of a picket line around the studio of respondent Warner. They did, however, return to work on Wednesday, March 14, resuming their duties in the prop shop.

On the morning of Saturday, March 17, the rumor spread in the prop shop that prop makers were going to be asked to do the work of carpenters who had either gone on strike or by absenting themselves were supporting the strike of Local 1421. Sapp, a sub-foreman in the prop shop and a leader of the

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<sup>13</sup>Local 44, by contract includes within its jurisdiction 21 work classifications and covers a wide variety of specialized skills such as cabinet making, pattern making, ship rigging, sheet metal work, miniature building, and many others.

prop makers, was asked to talk to Francis E. Fuhrmann, head of respondent Warner's technical department, about this rumor. Accordingly, Sapp accompanied by Gidlund and Horner, two co-workers, went to see Fuhrmann and told him of these rumors. Fuhrmann replied that as far as he was concerned none of the prop makers would be asked to go outside of their jurisdiction and no one would be discharged for refusing to do so. Sapp reported this conversation to the rest of the prop makers. About an hour later, Fuhrmann called Sapp and told him that he might have to amend the statement and ask the prop men to go into the carpenter shop on Monday, March 19.

The prop makers came to work Monday morning, March 19, at their accustomed hour. Shortly thereafter William G. White, foreman of the prop shop, was ordered by Fuhrmann to send all of his crew into the carpenter shop. After the men had gathered there, Fuhrmann entered accompanied by Brewer, DuVal and other Alliance representatives. Brewer was the first to address the assembled employees. He stated that Alliance members were expected to go into the carpenter shop and perform the work of carpenters or to do any other work required by the studios, under penalty of discharge by the studio for refusal to do so. Brewer stated further that Walsh had told the respondent Producers that he would keep the studios running during the "trouble" and that the Conference of Studio Unions was trying to take over the entire industry.

At the conclusion of Brewer's remarks, Fuhrmann told the men to return to their work and that in time they would be asked to take the jobs vacated by the strikers.

Shortly after the gathering, Fuhrmann asked White how the prop men felt about this turn of events. White told Fuhrmann that he believed that the men would refuse to go into the carpenter shop. Fuhrmann then asked if they would take blue slips<sup>14</sup> rather than work as carpenters and White replied that he was of the opinion that they would choose this course. Fuhrmann stated, "That is the way it will be." Around noon, Fuhrmann called all the prop men together, told them that they were now expected to go into the mill and perform work as carpenters and for their refusal to do so they would be eliminated from the studios. He stated further that the prop men were expected to build sets because they were then of paramount importance in the production of motion pictures.<sup>15</sup> Fuhrmann's warning that for refusal to perform carpentry work the prop men would not be employed by Warner's nor would they be permitted to work in the industry again was repeated by a number of witnesses and it is found as a fact that Fuhrmann made this statement. Sapp inquired if it would not be wise to get

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<sup>14</sup>The off pay-roll notice was referred to throughout the hearing as a "blue slip."

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<sup>15</sup>Members of the Carpenters Union made the floors, the ceilings and the walls of any desired set. Members of Local 44 made the props which were placed upon or in the set.



a show of hands and to find out whether the prop men would refuse to go into the carpenter shop. In response to this inquiry, all the prop makers, some 38 in number, indicated that they would refuse to comply with Fuhrmann's direction. Whereupon Fuhrmann said that lots of prop work remained to be done and ordered the men to return to their jobs. Following this refusal, Fuhrmann reported the incident to Carroll Sachs, respondent Warner's labor relations manager, who instructed Fuhrmann to terminate the employment of the prop makers. A termination of employment notice was then made out and shortly before the close of the shift, they were distributed to 38 prop makers.<sup>16</sup>

In its brief respondents acknowledge that respondent Warner delivered to the employees named above, "blue slips which it intended should have the effect of discharging such insubordinate employees" and they were "so discharged," despite the contrary contention at the hearing that the prop makers were placed "off payroll" by reason of their refusal.

At about 6 p. m. on March 19, White received a

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<sup>16</sup>In this connection Simpson who had not attended either the Brewer meeting or the Fuhrmann meeting and who had not up to that time indicated a refusal to perform carpentry work was along with the other prop makers given a blue slip. Fuhrmann admitted that he did not know whether Simpson had refused to perform carpentry work but he treated the group as a whole since they indicated at the meeting with him that they would not perform carpentry work and all the prop makers were issued blue slips.



telephone call from Fuhrmann requesting him to report to the studio. On arrival White found all the prop makers were present except Sapp and Fuhrmann and Duval were likewise there. Duval read to the assembled prop makers the directive issued by President Walsh advising the prop makers that, until the end of the emergency created by the strike of Local 1421, members of Alliance studio locals were not to observe "trade jurisdictional lines" in the studios. Horner, one of the prop makers and Local 44 steward on the lot, asked Duval, "Why make scabs out of us? Why don't you go out and hire some professional strike breakers and leave us fellows alone?" Somebody made a motion that Duval leave the meeting and he did.

Fuhrmann then took up the discussion, urging the prop makers to keep the studio "rolling" regardless of what they were asked to do. Someone suggested that other crafts represented by Local 44<sup>17</sup> be asked to come in on the "deal" as well as the prop makers. The prop makers decided that if they could get the other crafts represented by Local 44 together, to consider this, they felt certain that the membership as a whole would be opposed to working in the carpenter shop and that the prop makers, as a minority group, thus would be protected. Fuhrmann was told that if he would call all of the Local 44 crafts together at 9 o'clock the next morning the prop makers would return and ask the en-

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<sup>17</sup>This would include, for example, such classifications as upholsterers, seamstresses, greensmen, etc.

tire membership on the Warner lot whether they would work in the mill, and the prop makers would abide by the majority decision of the membership. Apparently this was agreeable to Fuhrmann whereupon all the prop makers left the premises. Late that night or very early on the morning of March 20, Fuhrmann called a number of the prop makers at their homes and told them that he could not keep this agreement and that he expected the prop makers to come to work on March 20, as carpenters. When Fuhrmann called Raymond M. Lora, he told him that most of the prop makers that he had telephoned had agreed to report that morning for work in the carpenter shop. The prop makers met in the morning, again canvassed the situation and found that no one had agreed to go in and it was decided that none of those who had gathered there would report for work in the carpenter shop.

On the morning of March 21, Fuhrmann called White and asked him to report to this office. Upon arriving White found Horner and Gidlund present. Fuhrmann asked if there was any change in sentiment among the prop makers and requested White to call a meeting on the lot that afternoon of all the prop men to again consider the demand to the prop makers to work as carpenters. White called the meeting and approximately all those issued blue slips reported that afternoon. At the meeting the men reaffirmed their decision not to work as carpenters. They indicated their willingness, how-

ever, to return to their own work as prop makers. Fuhrmann was so advised.

On March 22, James Peck, a sub-foreman, held a meeting of all prop makers at his home so that they could consider again the question of working. White stated that he saw no reason to change the decision and in any event, the group should await the arrival of Sapp, who was meeting with Carl Cooper, seventh international vice president of the Alliance. Sapp arrived and reported no new developments as a result of his interview with Cooper, and that the Alliance request to its members to cross jurisdictional lines still stood. By a vote of 19 to 16, it was decided to return to work as carpenters. It appears that three prop makers, from the afternoon shift, who should have been at work at the time the meeting was held, participated in the vote. There is no record evidence that these three participants had received blue slips and had indicated any refusal to go into the carpenter shop. Fuhrmann was then informed that all the prop makers would be in for work the next morning. It appears that about 24 of the prop makers reported for work and about 12 including complainants herein named, refused to go into the carpenter shop and except where differently indicated in this report, refused thereafter to work in the carpenter shop during the period of the strike.

The foregoing findings are based principally upon credible and for the most part uncontradicted testimony of White, Sapp and Lora corroborated by the

testimony of numerous other witnesses. The foregoing findings also complete the resume of the joint action taken by the prop makers who refused on March 19, to go into the carpenter shop and were on that day discharged. Accordingly, the undersigned will now pass to the cases of the individual complainants on respondent Warner's lot.

Jesse L. Sapp, sub-foreman, in the prop shop had been employed for about 9 years. Under the Local 44 contract with the producers, Sapp was classified as a prop and miniature gang boss. Sapp had spent his entire time in the industry in property work and the building of miniatures. In addition, he was the chief lay out man in the prop shop and did the lay out work on a complicated prop such as a B-17 Flying Fortress. Sapp has never been employed in the carpenter shop at respondent Warner's. Sapp has been a member of the Alliance since 1936 and of Local 44 since its organization in 1939. He was expelled from the Alliance by sentence dated May 31, 1946 of which respondent Warner received notice on June 14, 1946.

Sapp testified as follows concerning his reasons for refusing to work in the carpenter shop: "... in the first place, my conscience wouldn't allow me to be a scab; and in the second place, it was in direct violation of the oath I took when I joined the International Alliance, Local 44." Sapp's refusal to perform carpentry work was maintained throughout the strike. After the termination of the strike and about November 1, 1945, Sapp, White and a



small committee of prop makers interviewed Brewer and asked him if they had his consent to return to work. Brewer replied that this decision awaited the return of President Walsh to Los Angeles. Sapp signed the Local 44 call book about November 9, 1945, and thereafter received a call to report to respondent Columbia but due to an illness was unable to accept the offered post.<sup>18</sup>

On November 24, 1945, Local 44 sent Sapp the following telegram:

Please notify this Local Union if you are available to accept employment in positions which we may have to offer or advise what you will accept.<sup>19</sup>

Sapp replied that he would accept the job that he held on March 12, 1945, at respondent Warner's. The wording of the telegram makes it clear that no particular job was being offered to Sapp.

William G. White, had prior to March 19, 1945, been employed by respondent Warner for about 9½ years. At the time of his discharge he was a fore-

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<sup>18</sup>Alliance locals maintain call books upon which a member could enter his name for employment by telephone or by appearing in person at the union office. Customarily in the industry, when the days work is done, the employee returns to work the next day, unless notified to the contrary or given a lay-off slip. Regular crew members are called back to work by the studio or told when to report. Temporary employees or those laid off desiring work elsewhere have their names placed on the union call book.

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<sup>19</sup>Copies of this telegram were also sent to Simpson, Lamb, Gidlund, Hand, Batchelder, Ames, Lora, MacDonald, and Hentschel.



man and in charge of the prop shop on the morning shift. White supervised from between 75 to 100 employees. White had never worked in the carpenter shop.

Around 1930, White had joined Local 946 of the Carpenters Union, but at the time of his discharge and for some time prior thereto was a member of Local 44 of the Alliance. White testified that had he gone into the carpenter shop on March 19, he would have had to build sets or parts of sets that the carpenters had built and had been building for years. Although White was aware of President Walsh's instructions to Alliance members to cross jurisdictional lines he nonetheless, refused to work in the carpenter shop, because as he testified, he would not scab and because of his oath as a union member. He has never refused to perform his customary work in the prop shop.

White applied for reinstatement on about November 6, 1945, by telephoning James Gibbons, superintendent of the prop shop, who referred him in turn to Fuhrmann. When White asked for his old job Fuhrmann said there was nothing that could be done and that White would have to see DuVal or Brewer. White also wrote respondent Warner a letter asking for his old job to which no reply was sent. White was one of the committee that interviewed Brewer on or about November 1, in an effort to secure Brewer's help in reinstatement.<sup>20</sup> Some-

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<sup>20</sup>Brewer testified that he told the committee that they were not entitled to reinstatement on the jobs

time in November, White signed the Local 44 call book, but never received a call.

George Stoica, Jr., first started to work for respondent Warner in 1929. During the last 11 or 12 years of his employment Stoica was employed in the hardware department of the prop shop where he prepared and fabricated such props as door locks and knobs and railroad and ship hardware. Stoica never performed carpentry work or built sets. Stoica did not receive his blue slip on the afternoon of March 19, due to the fact that he had left the lot before the shift ended. He was discharged when he returned to the lot for the 6 o'clock meeting with Fuhrmann and the other prop makers. On March 19, 1945, Stoica was a member of Local 44. He was expelled by sentence dated May 31, 1946, of which respondent Warner received notice on June 14, 1946. Stoica knew of President Walsh's instructions to all Alliance members to cross jurisdictional lines. He was not individually asked to perform carpentry work by either Fuhrmann or Gibbons. He admitted that he would not have done so if asked, and he was one of those, who along with the other prop makers voted not to go into the carpenter shop on March 19.<sup>21</sup>

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they held on March 12, but they were entitled, as was any other Alliance member in a like position, to any job they were willing to accept and that he would do what he could to see that jobs were obtained as quickly as possible.

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<sup>21</sup>Stoica testified as to his reason for refusing to work in the carpentry shop as follows: "my work

During the course of the strike, Stoica saw Fuhrmann on a number of occasions and asked for his old job. He was told that unless he would go to work in the carpenter shop he could not work again for respondent Warner. After the strike and on November 10, 1945, Stoica asked Fuhrmann for his job and was told to sign the Local 44 call book and in the event prop makers were needed he would be returned to work. Stoica asked Fuhrmann whether he could have a job as a hardware man and Fuhrmann replied that he had one coming in. On one occasion, Carroll Sachs told Stoica that it would be unfair to the men who had cooperated during the strike and had done carpentry work to reinstate him. Sometime in January 1946, Brewer told Stoica that the Alliance was not keeping the prop makers out of their jobs and that Stoica could return to respondent Warner the next day if he could get his job back. Stoica did sign the Local 44 call book about November 9, and sometime thereafter received a call at respondent Columbia but refused the call.

Lynn G. Batchelder was employed by respondent Warner as a prop maker for about a month and a half prior to March 19, 1945. He received the blue slip on that date from Gibbons. At this time Batchelder was a member of Local 44. On June 14, 1946, respondent Warner was notified that effective June

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as a hardware man brought me in contact with carpenters and set designers, and I felt that if I went in there and done carpenter work that when the strike ended that I would not be able to run that department efficiently."

17, 1946, Batchelder was suspended by Local 44 for 6 months and fined the sum of \$300. It was stipulated by and between counsel for the Board and the Alliance that the sentence imposing the fine also provided that nonpayment of the fine within 2 months automatically expelled the member fined from Local 44. Batchelder not having paid the fine was thus expelled. Batchelder's dues, however, had been paid through to October 31, 1946.

Batchelder testified as follows concerning his reasons for refusing to work in the carpenter shop between March 19 and October 31, 1945: "Because I don't care to be a scab. I don't care to do the other fellow's work. I don't feel that the working man has any right to go in and do the other fellow's work. They won't do themselves any good and they won't do Warner Bros. any good and they won't do their country any good."

On October 31, 1945, Batchelder was one of many prop makers returning in a group seeking reinstatement and not permitted to enter respondent Warner's lot. The following day Batchelder called Fuhrmann and asked if he had a call and was told that there was no call for him and to stand by. He did not put his name on the Local 44 call book after October 31, 1945, nor did he try to obtain work elsewhere in the industry. He did, however, receive the telegram referred to above from Local 44 on November 24.

George M. Hand was prior to March 19, 1945, employed by respondent Warner for about 2 years



in the prop shop where he engaged in special effects work and built miniatures. Hand had never worked in the carpenter shop and prior to March 19, had never been asked to work there. Hand was given his blue slip on March 19. He was a member of Local 44 since its organization in 1939 and had paid his dues to November 1, 1946, but was suspended from the Union for a period of 6 months effective June 17, 1946, and fined the sum of \$300. Not having paid the fine he was later expelled. Respondent Warner received notice of the suspension on June 14, 1946. Hand acknowledged that at no time during the strike was he willing to perform carpentry work. He testified that he refused to perform carpentry work because he did not want "to be a scab," and because he "didn't want to take jobs away from other men or other crafts and work which did not belong to us."

About November 1, 1945, Hand sought reinstatement by telephoning the lot. He spoke to someone, not identified in the record, who told him that there was no work available and that he should get a clearance from Local 44. Hand signed Local 44's call book in November 1945 and thereafter secured a position in the industry working steadily up to about June 1946.

Raymond M. Lora was prior to March 19, 1945, employed by respondent Warner for about 2 years as a prop maker doing special effects work. Lora was given his blue slip along with the other prop makers. He was a member of the Alliance but was



expelled from Local 44 on May 31, 1946, of which respondent Warner received notice on June 14, 1946.

Lora gave the following as his reasons for refusing to go into the carpenter shop: "My card didn't call for me to do carpenter work, and therefore there is no union that is authorized to have you work other than what your card calls for, and I just couldn't go in there and scab, you know, and scab on fellows that live right in my immediate neighborhood. Eight or nine of them live right out there in Burbank right with me, and I couldn't go in and do their work while they were out there in that picket line. I couldn't do that."

On October 31, 1945, Lora, accompanied the other prop makers who sought reinstatement at respondent Warner's and were denied entrance to the lot. Lora sought out Fuhrmann and asked when they would be permitted to enter and was told by Fuhrmann that the prop makers would not be hired. Lora asked Fuhrmann to speak to Carroll Sachs but no word came back from Sachs as to what was to be done with respect to the prop makers. On November 6, Lora called Gibbons and asked when he and Hand were going to be reinstated and was informed by Gibbons to get the matter straightened out with Local 44. Lora went on Local 44's call book in November and thereafter found work from January to March of 1946.

Robert N. Bonning was prior to March 19, 1945, employed for about 21½ years by respondent Warner. Bonning was a prop and miniature gang boss

working on all kinds of props but specializing in metal work. Bonning was given his blue slip on March 19. He was, and still is, a member of Local 44 not having been suspended or expelled from the Union. Bonning testified as follows concerning his reasons in refusing to work in the carpenter shop: "Well, one has already been stated, the scabbing. That was one reason. Another reason was all machines in the mill have signs on them: 'To be operated by machine operators only.' There was a state compensation law that I don't think would protect us if we operated them. . . . I have a lot of personal friends that is carpenters. I chum around with them."

Following the conclusion of the strike, Bonning called Gibbons and asked for his job and was referred to Fuhrmann. Fuhrmann told Bonning that nothing could be done for him and that he would have to clear with his union. Thereupon, Bonning spoke to Secretary Hill and asked about his job but was told that Brewer had not made up his mind. Bonning has since found regular employment in the industry, and he testified that since May 1946, he no longer desired reinstatement to his old job.

Carl H. Gidlund was employed by Warner since 1929. He was transferred to the prop shop in 1943, where he specialized in sheet metal work. Gidlund had never worked in the carpenter shop. He attended the meeting addressed by Brewer, but did not attend the later meeting addressed by Fuhrmann for he was told by Gibbons that he was not

concerned with the meeting and was not equal to the kind of work that the other prop makers had been asked to do. On the afternoon of March 19, Fuhrmann told Gidlund that he was going to be asked to do carpenter work. Gidlund refused to do so, because he had never done it before, had no tools for the trade, and as he testified he would not "scab." Whereupon Fuhrmann said that he was sorry but "that's it." Thereafter Gidlund was discharged.

Gidlund worked both during and after the strike in the industry but at the conclusion of the strike he sought his old job by telephoning Gibbons. Gibbons told Gidlund to await a call and he received the same story from Fuhrmann, to whom he also spoke. On November 24, Gidlund received the telegram from Local 44 to which he replied that he was willing to accept the job from which he was "fired March 12, 1945." Gidlund, an Alliance member, was by sentence of May 31, 1946, and served on respondent Warner on June 14, 1946, expelled from Local 44.

Donald MacKellar was employed by respondent Warner for about 7 months prior to the 1945 strike. Most of his time was spent doing plastic work in the prop shop. He refused to work in the carpenter shop and was discharged. MacKellar was a member of Local 44 and in addition has maintained membership in the Carpenters Union off and on over a period of years.

MacKellar testified as follows concerning his rea-

sons for refusing to work in the carpenter shop: "One was that I would have been going under a threat, which I do not like. . . . The other was, it isn't my principle to take the job of another man that is out on strike. I have been brought up as a union man all my life, and I still have the same ideas that were taught me as a boy what a union man is, and I can't help it. I can't change it." He did not work during the strike but upon its conclusion tried unsuccessfully on about six occasions to get his job back at respondent Warner. He was finally rehired about August 1, 1946, but quit voluntarily about September 7, 1946. This latter quitting is not part of the instant proceeding.

Paul DeSanctis has been employed in the motion picture industry for about 20 years, the last 4 or 5 of which was spent with respondent Warner in its prop shop. DeSanctis is a skilled cabinet worker. DeSanctis along with the others, refused to do carpentry work and thereafter received his blue slip.<sup>22</sup> At the conclusion of the strike DeSanctis along with Charles Jensen another prop maker called upon Fuhrmann seeking reinstatement and they were instructed to clear it with Local 44. Thereafter DeSanctis saw DuVal about reinstatement and the next day was given a call at respondent Warner and returned to work on November 7, 1945. DeSanctis

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<sup>22</sup>The Board alleged that DeSanctis was refused reinstatement following discharge. It appears that DeSanctis was rehired in November 1945, and the Board's motion to amend its complaint accordingly, was granted.



was working for respondent Warner at the time of the hearing.

Leo L. Lamb was prior to March 19, 1945, employed by respondent Warner for about 2 years. Most of this time had been spent as a gang foreman on rigging and submarine work under the jurisdiction of the prop shop. Lamb refused to do carpentry work and received his blue slip on March 19, 1945. Lamb was a member of the Alliance having joined Local 44 sometime after 1942. He also was, and had been for some 20 years, a member of the Carpenters Union. In June 1946, Lamb was expelled from the Alliance.

On October 31, 1945, Lamb applied for reinstatement and was told that there was no jobs available for prop makers. Lamb then talked to Gibbons who stated that the "case" of the prop makers who had refused to perform carpentry work had not been settled; that there was no opening for Lamb and referred him to Local 44. When Lamb spoke to Gibbons and Fuhrmann thereafter, he was in each instance referred to Local 44. At this time Lamb was a member in good standing of Local 44 and was ready and willing to return to his job. On November 24, Lamb received the telegram, heretofore referred to, and he replied that he was willing to accept the position that he held on March 12.

William J. Simpson was in charge of the special effects department in the prop shop from 1937 to 1945. Simpson worked the entire week of March 12, 1945, not respecting the picket line and came to



work on March 19, 1945. He did not attend either the Brewer or Fuhrmann meeting. Nonetheless he was discharged at the close of his shift. When he received the blue slip he asked Gibbons why he was given it since he had not been asked to do any carpentry work. Gibbons did not answer the question. After Simpson was discharged he was asked to do carpentry work for the first time at the meeting held that evening with Fuhrmann. Fuhrmann acknowledged that he treated Simpson as though he had refused to perform carpentry work but could not testify with certainty whether Simpson had actually refused to perform the work. It seems clear that although prior to discharge Simpson had not indicated a refusal to perform carpentry work, he did indicate at the evening meeting with Fuhrmann that he would not perform any work outside of his jurisdiction.

Simpson was and still is a member of Local 44. He did not work for respondent Warner after March 1945, although he tried on several occasions to get his job back.

Simpson testified that he did not ask for his job back at Warner until after October 31, but that during the strike he would have returned as a prop maker. In May 1945, Simpson became physically incapacitated and apparently was not well enough to work until January 1, 1946, actually returning to work elsewhere in March of that year. Simpson acknowledged that he was unable to work during the strike because of his illness.

Charles Jensen did not testify due to his absence in Europe at the time of the hearing. However, it was stipulated by and between counsel for the Board and the respondents that Jensen, if called as a witness would have testified that: (1) he was employed by respondent Warner from November 1944, to March 19, 1945, in the prop department and that Gibbons was his foreman; (2) he was a member of Local 44 of the Alliance; (3) he did not work on March 12 or March 13, but reported on March 14 and finished the week; (4) on March 19, 1945, he attended the Fuhrmann meeting when he was asked along with others to work in the carpenter shop and that he with the others refused to do so; (5) he was given a blue slip; (6) he was now and has been since February 1946, employed by respondent Twentieth Century, and he no longer desired reinstatement.

The foregoing covers the cases of the prop makers employed by respondent Warner named in Case 21-G-2564. There is yet to be considered the cases of those named therein but who worked at different occupations and are members of different locals.<sup>23</sup>

## 2. Other Warner Cases

The amended consolidated complaint alleges that on March 19, 1945, respondent Warner discharged

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<sup>23</sup>The case of H. C. MacDonald, in Case 21-C-2564, was dismissed on motion of the Board at the hearing.

Charles J. Larson and Fred Seward<sup>24</sup> and thereafter refused to reinstate them because they refused, along with others, to take the jobs of striking employees.

With respect to John C. Goudie, Kenneth B. Coffey, Willis F. Howe and Paul L. Stanley, the amended consolidated complaint alleges that respondent Warner, on and after October 31, 1945, refused to reinstate these named employees to their former positions because they refused to cross picket lines during the strike and engaged in concerted activities for their mutual aid and protection.

Charles J. Larson started to work for respondent Warner in 1934. On and after 1941, and up to March 19, 1945, Larson was employed as a grip. Larson has been a member of Local 80 of the Alliance since 1942, and at the time of the hearing was in good standing.

On March 19, 1945, Tull, foreman of the grip gang, asked Larson to erect a set on the stage, work which up to this time had been performed by carpenters. Larson refused to perform this work and was then told by Tull: "If you don't do carpenter work, go over to the grip room." Larson testified and it is found that, when Tull requested him to erect the set, he remarked to Tull that on a previous occasion when he attempted to perform work of a similar nature, he had been instructed not to do the job because such work was under the carpenter's jurisdiction. Larson saw Ketcham, head of the grip department, and asked for discharge and availability slips. Ketcham however stated that too many of

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<sup>24</sup>Seward's case is discussed hereafter.

them had already been issued and told Larson: "You just go home."

On November 12, 1945, Larson called the grip office to inquire about a call and was informed that there was no work for him. About December 2, Larson asked Ketcham for a call and was told that he would have to inquire about it at the union. Larson accompanied John C. Goudie, when the latter had a conversation with Barrett, referred to hereafter, wherein Barrett stated that Larson, as well as Goudie, would not be rehired by respondent Warner because of agreements made between President Walsh of the Alliance and the Producers that the Producers would not reinstate those individuals who refused to pass picket lines during the strike.<sup>25</sup>

Although Larson signed the Union call book about November 14, 1945, he made no particular effort to find another job. He testified that he "figured" that he was "entitled to go back there."

John C. Goudie started with respondent Warner as a carpenter in 1928, was injured in 1934, and returned to work as a grip in 1936.<sup>26</sup> When he

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<sup>25</sup>Larson did not strike and never joined a picket line. He apparently refused to pass through the picket line on and after March 19, 1945.

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<sup>26</sup>A grip performs rough carpentry work such as the erecting of platforms for lighting sets and at times assists the cameraman in shooting pictures. A grip has also been defined as one who performs all manual labor work in and around a motion picture studio concerned only with the handling of scenery parts. See Dictionary of Occupational Titles, Part I, U. S. Government Printing Office, Washington, D. C. (1939).



went to work as a grip he became a member of Local 80 of the Alliance.

Goudie worked at respondent Warner's during the week ending March 10, 1945. He did not work on March 12, the day the strike started, because as he testified: "I went to the studio and they had a picket line across the entrance, so I didn't go through."

At the conclusion of the strike Goudie reported for work because of his understanding that all who had been out during the strike, whether on strike or not, were to return to work. He saw Ketcham, and asked for a call but Ketcham stated that there was no work for him. Goudie was a careful and precise witness. He testified credibly and without contradiction, and it is found, that on or about November 2, 1945, Ketcham told Goudie, that if Barrett, the business agent of Local 80, would give Goudie a release and telephone Ketcham to that effect, Ketcham would give Goudie a call. Barrett told Goudie that President Walsh of the Alliance and the Producers had agreed not to hire anyone who refused to go through picket lines and there was nothing he could do for him under the circumstances. Goudie made further efforts at reinstatement and in January 1946, asked Bill McConnell, head of the scenic department to help him get his job. On a later occasion, McConnell told Goudie that he had sought the help of Alliance Vice-President Cooper but that Cooper would do nothing for Goudie because he had filed charges against respondent Warner. On Jan-



uary 21, 1946, Barrett told Goudie that even if a call did come from respondent Warner for a grip, Goudie would not get the call because of the pending charges. Goudie has never received a call to return to respondent Warner through Local 80.<sup>27</sup>

Seward, Coffey, Howe and Stanley

After the Board had concluded its case, counsel for the respondents moved in the midst of their defense to dismiss the complaint against Seward, Coffey, Howe and Stanley on the ground that no charge had been filed on their behalf. This procedural aspect has been adverted to above and as there indicated, the motion was denied. It appears without a question that no charge was ever filed on behalf of Stanley. With respect to Seward, Coffey, and Howe however, their attorney did present a verified charge to the Board's Regional Office, and for some unknown reason the charge was never formally docketed. However, with respect to these three individuals, counsel for the respondents was aware of the discrimination asserted and did discuss the cases with a Field Examiner who represented the Regional Office.

The technical and procedural irregularities,

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<sup>27</sup>The above findings concerning Goudie's efforts at reinstatement are based upon his credible and uncontradicted testimony, despite the fact that the said testimony is largely hearsay in character. Ketcham, McConnell and Barrett did not testify. Moreover the testimony impressed the undersigned as reasonable and worthy of belief.

brought to light as a result of respondents' motion to dismiss, were not, in the undersigned's opinion at the time of the hearing, of sufficient weight to warrant dismissal of the complaint in those respects. Upon further consideration of the matter the undersigned is still of the same opinion. The Act does not preclude the Board from dealing adequately with unfair labor practices which are related to those alleged in the charge and which grow out of them while the proceeding is pending before the Board.<sup>28</sup> It has likewise been held that rulings permitting an amendment to a complaint during the course of the hearing, by adding another employee to those alleged to have been wrongfully discharged, affords no basis for challenging the validity of the hearing.<sup>29</sup> In the instant proceeding counsel for the respondents had notice by service of the original consolidated complaint, dated July 19, 1946, that the Board alleged discrimination on the part of respondent Warner against Seward, Coffey, Howe and Stanley. Moreover, the Board was permitted and did without objection present its case with respect to them and it was not until the respondents reached their defense, that the motion first was made to dismiss because of the absence of the charge. For these reasons, therefore, the undersigned is of the opinion that the respondents had

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<sup>28</sup>National Licorice Co. vs. N. L. R. B., 309 U. S. 350, 368, 369.

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<sup>29</sup>Consolidated Edison Co. vs. N. L. R. B., 305 U. S. 197, 224, 225.

ample notice to prepare their defense, that adequate opportunity was given at the hearing for the trial of the issues raised in the amended consolidated complaint against these individuals, and that the respondents were not prejudiced by the rule denying the motion to dismiss. These cases therefore, will be discussed on their merits.

Fred Seward started to work for respondent Warner in 1934 as a grip. He was and still is a member of Local 80 of the Alliance.

On either Monday morning, March 12, or 19, 1945, Brewer addressed all the studio grips and told the assembled men that they would be expected to do carpentry work in order to keep the studios running. Shortly after, Fuhrmann asked the grips to keep the studios in production and to do everything that was asked of them. On March 19, Ketcham told Seward that he had to go into the mill, whereupon Seward, walked to the grip room, took off his overalls, and told Ketcham that he did not feel right about doing carpentry work; he was not going to do it; and was going home. Seward added that it was not right for him to do carpentry work and that it was the same as "scabbing." Ketcham instructed Seward to report to Fuhrmann. On reporting to Fuhrmann, Seward said that he did not feel right about going into the carpenter shop and that he would like to have a blue slip. Fuhrmann told him that he could not give him a blue slip and that he would have to report to his union. Thereafter, and during the course of the strike, Seward

did not work for respondent Warner. Seward was not willing to return to work to perform carpentry duties between March 19 and October 31, 1945.

The day the strike was over, Seward sought out Ketcham and was told that there was no job for him but that he could leave his telephone number and he would be called. Seward never received a call thereafter from respondent Warner. He went on the Local 80 call book after the end of the strike, became ill sometime later and was hospitalized.

Kenneth B. Coffey has been employed in the motion picture industry since 1914 and started to work for respondent Warner in 1922. Coffey is a lamp operator. He has been a member of the Alliance since 1911, and at the time of the strike belonged to Studio Electrical Technicians, Local 728.<sup>30</sup> Coffey reported for work on Monday, March 12, observed the picket line and refused to cross it.

Coffey did not work in the industry during the strike, but on October 31, 1945, presented himself at the gate seeking reinstatement. He was with Stanley and Howe, other lamp operators, and they were told that there was no call for them on that day. Sometime in November, Coffey asked Jack Ohl, assistant chief electrician, why the "boys" could not return to work. Ohl answered that it was,

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<sup>30</sup>Coffey was a member of a construction local of the International Brotherhood of Electrical Workers, A. F. of L. up to sometime in 1945.

“somebody higher up than I am that is keeping you fellows out.”<sup>31</sup>

The respondents' answer respecting Coffey consists of a general denial. At the hearing, however, L. M. Comes, respondent Warner's chief electrician, testified concerning Coffey's lack of ability due principally, according to Comes, to his addiction to the use of alcohol. Comes testified generally that Coffey was an “old timer”; everybody felt sorry for him; as long as he could get around he was kept on the job; he had been warned several times about drinking; and, if he did not stop drinking he would be dismissed. This was over a period of about 2 to 3 years prior to March 1945. Despite Comes' intimate knowledge of Coffey's habits over a period of some 28 years he had never discharged him. He admitted that he knew that Coffey had requested work about October 31, 1945, but testified that there was no need for him at the time.

The undersigned is persuaded that the Labor Committee's instruction issued by Pelton on October 31, 1945, to all of the Producers, rather than habits condoned over a long period of years, was the true cause of respondent Warner's refusal to reinstate Coffey. This instruction is herein set forth:

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<sup>31</sup>Ohl denied this testimony. The denial is not credited because the substance of the conversation is consistent with instructions issued on October 31, by Pelton, to all of the Producers and which is the subject of comment hereafter.



Additional Instructions No. 2—Issued Oct. 31, 1945,  
4:30 p.m.

Members of I. A. T. S. E. who bolted from their locals and/or refused to come to work during the strike, shall not return to their regular I. A. jobs without approval of the I. A. local concerned. If you have called any of these people by mistake, explain the error to the individual and lay off such people.

I. A. replacements who were borrowed from any of the original 12 I. A. locals shall not return to work in their respective locals without making advance arrangements with the Business Agents.

/s/ F. E. PELTON.

When questioned concerning this document, Comes acknowledged, that he had received instructions that men who did not work during the strike were to report to their locals before employment.<sup>32</sup>

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<sup>32</sup>Brewer testified that Herbert Sorrell, president of the Conference of Studio Unions, was interpreting the directive that settled the strike so as to require the reinstatement of those who observed picket lines during the strike. Brewer, accordingly told Carroll Sachs of respondent Warner that the Alliance would not agree to the displacement of any of its members by the reinstatement of these men; that the Alliance had filled the jobs at a difficult time and it would not agree to the displacement of the men supplied; that the rights of the job holders as well as the job seekers were to be determined by the Alliance and the Producers and not by Sorrell and the Producers. He testified further that he had no objection to the rehiring of the job seekers

Comes never discharged Coffey or advised Local 728 that he no longer desired to have him on the lot.

Willis F. Howe was first employed by respondent Warner in 1938 as an electrician. Howe was and is a member of Alliance Local 728. Howe reported for work on Monday, March 12, saw a picket line around the studio and did not go through the line. He did not report for work at any time thereafter during the course of the strike.

On October 31, Howe reported for work accompanied by Coffey and Stanley. They were informed that there was no call for them. On November 1, 1945, Howe spoke to Ohl and was told that things were "awfully slow." At the same time, Ohl acknowledged that some 48 permit men were at work but that the refusal to reinstate Howe was due to conditions beyond Ohl's control.<sup>33</sup> Sometime later in November, Howe spoke to Robert C. Amy, a call clerk in the electrical department, and was told by Amy that his request for reinstatement would be taken care of in time.

Paul L. Stanley was first employed by respondent Warner in 1926 as a lamp operator. He is a member of Local 728 of the Alliance.

Sometime in September, 1945, Comes asked Stan-

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but it must not be in a way that would displace an Alliance member unless in accordance with "our rules and regulations."

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<sup>33</sup>Ohl denied this conversation with Howe. The undersigned has credited Howe's testimony for the same reasons as indicated in footnote 31, pertaining to a similar denial of a conversation that Ohl engaged in with Coffey.

ley to go into the carpenter shop. Stanley refused, saying that he did not believe it was right to do so. The matter apparently was dropped. Stanley worked after this incident until October 1, when he stayed out for the balance of the strike. On October 31, Stanley accompanied by Howe, Coffey and others reported to the studios and sought a call but they were informed that they would not be hired.

About 2 weeks after the strike ended, Stanley received a call through his local to report to respondent Warner. He worked one day. On November 29, Stanley telephoned the studio and asked Amy, the call clerk, to punch his time card for him. Amy refused to do so and, on investigating the matter, discovered that Stanley had also checked in on November 28, without receiving a call. Amy reported the matter to Comes who thereafter informed Stanley that if he got a call through his local, Comes would hire him, but that he would not place him on the regular call list. Respondent Warner never called Stanley after his request to Amy. Stanley worked irregularly for other Producers until March or April, 1946, when he decided that he "had enough." Thereafter, Stanley went into business for himself and from that time no longer wished reinstatement to his old position at respondent Warner.

In the undersigned's opinion the refusal to reinstate Stanley on October 31, stems from Pelton's instruction to the Producers, previously mentioned. It does appear that Stanley was given calls at respondent Warner and other Producers following the

termination of the strike. Sufficient reasons exist, in the undersigned's opinion, for respondent Warner's refusal to place Stanley in his old job on and after November 29, 1945, because of his improper request to Amy on that date to punch his time card.

3. Respondent Warner—Case No. 21-C-2660.

J. Harold Rogers was first employed by respondent Warner in 1921. For a number of years thereafter, he was assistant to Louis Geib head of the Technical Department. At other times Rogers worked as a carpenter but in 1943, he became a prop maker and was transferred into the prop shop. Rogers has been a member of the Alliance since 1919, and was at the time of the strike a member of Local 44.

Rogers was one of the prop makers who on the morning of March 19, 1945, heard Brewer and Fuhrmann address the prop makers and who thereafter refused to perform carpentry work as requested by Fuhrmann. He was given a blue slip similar to those issued to the other prop makers.

On October 31, Rogers sought reinstatement. After a group of carpenters had passed through the gate, Rogers and other prop men came to the window where Fuhrmann stood. Fuhrmann stated the question of their employment had not been settled and they could not return to work. About November 2, 1945, Rogers telephoned the studio and was told that there had been no ruling on the question. Rogers signed the call book on November 3, and



thereafter received numerous calls from his local to work at other studios, all of which he turned down, because they were not at respondent Warner's. Rogers was reinstated on February 12, 1946. He worked for about 1 week and then asked Fuhrmann for an indefinite leave of absence which was granted. Rogers no longer desires reinstatement.

#### 4. Respondent Columbia—Case No. 21-C-2505.

The amended consolidated complaint alleges that respondent Columbia discharged Joseph P. Cuccia on or about April 3, 1945, and thereafter refused to reinstate him because he refused to perform the work of striking employees and engaged in concerted activities with other employees. Respondents' answer is a general denial.

Cuccia was employed by respondent Columbia from June to August 1942, when he was inducted into the United States Army. He returned to work for respondent Columbia in May 1943, after his honorable discharge. When Cuccia was rehired he told Tom Stevens, his superior, that his army discharge was due to defective eyesight and sinus trouble. Cuccia was a laborer and a member of Studio Laborers and Utility Workers, Local No. 727. It was his job to stand by with shooting companies, sweep the stages and after sets had been struck by the grips, he would assist in loading the sets onto trucks for storage. When a company was not engaged in shooting a picture, Cuccia "would kind of clean up . . ." Cuccia never did any painting while employed by respondent Columbia.



About March 27, 1945, Cuccia was ordered to stage 4, where he found 10 to 15 members of the local together with Al Erickson, the business representative, and Tom Stevens. Erickson stated that the men would have to go into the paint shop and wash paint buckets, a task which had previously been performed by members of a Hod Carriers' local, not affiliated with the Alliance. Prior to the strike, members of Cuccia's local, had not been admitted to the paint shop. Erickson stated furthermore, that his orders were that unless members of Local 727 worked in the paint shop their employment would be terminated. Whereupon the employees voted not to work in the paint shop. Following this event, Cuccia returned to his regular work.

On the morning of April 3, Cuccia's pusher ordered him to report to Dave Vail, the special effects boss, "to go painting." Cuccia refused stating that he would report to the office instead.

Cuccia testified that on reporting, Stevens gave him an availability slip and a time card, and told him to punch out. However, the availability slip that Cuccia presented at the hearing was dated July 13, 1943, and it is the undersigned's opinion that Cuccia's recollection of this incident is not correct. Rather, the undersigned is of the opinion, and finds, based upon Steven's testimony, that upon reporting to Stevens, Cuccia was told to report to his local. Stevens testified that he had been instructed to send laborers to their local "if they didn't work for Mr.

Vail," presumably for their refusal either to paint or to wash paint pots. Cuccia testified that he refused to go into the paint shop because of his physical defects (sinus trouble) and for the further reason, that he could not see himself "being used as a strike breaker."

On the afternoon of April 3, Cuccia asked Erickson to help him get his job back. Erickson called the studio, but was unsuccessful in securing Cuccia's reinstatement. On April 5, Cuccia returned to the studio for his check and asked for an availability slip stating the reasons for his "discharge." He was issued a Statement of Availability which gave no reason for his separation. A. I. Chancey, respondent Columbia's head timekeeper, testified that when Cuccia saw him on April 5, Cuccia stated that he wanted an availability slip because he was going to work in a war plant and that it was the practice to issue a Statement of Availability when an employee requested one for the purpose of leaving the motion picture industry. The undersigned concludes and finds that Cuccia was not discharged as alleged, but rather that he voluntarily absented himself on and after April 3, because of his decision not to fill the job of a striker.

In either November or December, 1945, Cuccia asked Stevens for his job but was told that the matter was out of his hands and that he did not know what he could do for Cuccia. Again in June 1946, Cuccia asked Stevens for a job and received substantially the same response. During the strike, and

up to about February, 1946, Cuccia was in the trucking business. Following the latter date, he did not attempt to secure work other than at respondent Columbia.

5. Respondent Columbia—Case No. 21-C-2562.

The amended consolidated complaint alleges that respondent Columbia discharged Irwin P. Hentschel on or about March 19, 1945, and thereafter failed to reinstate him because he refused to perform the work and take the job of a striking employee. The respondents' answer is a general denial.

Hentschel, a prop maker, was first employed by respondent Columbia in 1937. On March 19, Hentschel was at work drilling rubber arrowheads in the prop shop. At about 1 p.m. Hentschel was instructed by his foreman, Geza Gasper, to attend a meeting in the carpenter shop. There Hentschel observed Supervisors Vail and Gasper and Brewer, DuVal and other Alliance representatives. Brewer instructed the members of Local 44, to do any work required of them by the studio. None of the studio officials spoke. Following the meeting Hentschel returned to his work.

Shortly thereafter, according to Hentschel's testimony, Gasper told him to drop the work that he was doing, fashioning rubber arrowheads, and go over and "paint those arrows, or else you will have to see Mr. Vail." Gasper testified that what he told Hentschel to do was to tone down the arrow shafts.

He denied that he instructed Hentschel to paint arrow shafts, although he admitted that he might have instructed Hentschel to "age" them. Gasper admitted, that when he instructed Hentschel to process the arrow shafts, Hentschel stated that this was painting and that Gasper told him that if he did not want to do the operation he should see Vail.<sup>34</sup> On this day, the painters were not at work at the studio.

Hentschel told Vail that he had been asked to paint and that under no circumstances would he take the job of a man on strike because it was against his principles.<sup>35</sup> Hentschel told Vail that he had been hired as a prop maker and that prop making did not include the task of painting. Hentschel asked if he was to understand that if he refused to paint his services would no longer be required and Vail answered affirmatively. Hentschel asked for an availability slip but Vail said that he would have to obtain it from the time office.

At the time office, Hentschel was told that Vail had his availability slip. Hentschel then when to Lacey, the personnel manager, and asked why he had been "discharged." Lacey replied that his hands were tied. Lacey told Hentschel that he could have an "extended availability slip" but Hentschel

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<sup>34</sup>Regardless of whether the process was one of painting or aging, it is clear from Gasper's other testimony that there had never been a previous occasion in his department to do work of this nature, it having been done elsewhere.

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<sup>35</sup>Hentschel was shop steward of Local 44.



demanded an availability slip that would permit him to work out of the motion picture industry. Chancey testified that Lacey instructed him that there was no reason to issue an availability slip to Hentschel because he had not been discharged. According to Chancey's further testimony when an employee was discharged, a close-out slip was made which was not done in Hentschel's case. The undersigned concludes and finds that Hentschel was not in fact discharged but rather refused to perform the work of painters and for this reason left his job.

On the morning of October 31, 1945, Gasper asked Hentschel to return to work the next day on the afternoon shift. Hentschel told Vail in a later telephone conversation that it was his intention to report October 31, at 1 o'clock, to talk to Vail before resuming work, so that an understanding could be reached as to the hours of his employment and respondent Columbia's attitude toward him as an employee. That afternoon Gasper assigned him to work. At the end of his shift, Hentschel was told that there was no more work and that he would be on call thereafter. Gasper testified that he was not responsible for Hentschel's failure to continue working after October 31, and he knew of no reason why Hentschel could not work as a prop maker after that date. He acknowledged also that union members with less seniority than Hentschel were continued in employment after October 31. It seems clear that Hentschel's dismissal was due to respondent Columbia's enforcement of Pelton's orders.



Hentschel was employed in the industry from September, 1945, to June, 1946, when his employment was terminated because of his expulsion from the Alliance.

6. Respondent Republic—Case No. 21-C-2563.

The amended consolidated complaint alleges that respondent Republic discharged Robert W. Ames on or about March 29, 1945, and refused to reinstate him thereafter for the reason that Ames refused to take the job of a striking employee. Respondents' answer denies the discharge; admits that on October 31, Ames was refused employment, and advised that all calls for employment in the prop department were being placed with Local 44 of the Alliance; and that respondent Republic would employ Ames should be sent by the local.

Ames was first employed by respondent Republic about January, 1945. He is a wood carver and was employed in the prop shop making props and build-miniatures. Ames has been a member of Local 44 of the Alliance since 1937.

About March 15, 1945, Ames refused to assist in the construction of a set, selling his foreman Dwight Holson that this was carpenter's work. A few days later, Ames again refused to do carpentry work, contending that it was not within the jurisdiction of his craft. Ames stated that he objected "to doing scab work, that it was work for which I was not employed, that I was a prop maker, and I insisted on remaining a prop maker."

About March 20, Howard A. McDonell, respondent Republic's business manager, told Ames that he understood that Ames did not wish to cooperate with respondent Republic. Ames replied that if McDonell meant that he had refused to act as a strike breaker it was true, because it was against his principles. McDonell urged Ames to get in line and do the work that he had been asked to do, but Ames reiterated his refusal to perform carpenter's work. About March 28, Ames again refused to do some carpentry work. On March 29<sup>36</sup> Holson told Ames that he was laid off; the studio was closing for a few days; but he was not fired.

Ames acknowledged that he was never told that he was discharged and that no threats of discharge were made to him because of his refusal to do carpentry work. He testified however, that in his conversation with McDonell, it was indicated clearly that he would be discharged because of his continued refusal to perform carpentry work.<sup>37</sup> Ames' lay off occurred not more than 1 day after the conversation with McDonell and at the same time, 9 other men were laid off, some of whom, unlike Ames, had performed carpentry work.

Jack Baker, respondent Republic's production manager, testified that about March 15, respondent

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<sup>36</sup>This date was fixed by Ames.

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<sup>37</sup>Ames testified as follows concerning this conversation with McDonell: "The substance of it was, 'Do as we say, or you will be fired.' Now, that is as clear as I can make it.

Republic determined to curtail its production. In accordance with its determination, Baker conferred with Ted Lydecker, head of the prop department, and Kenneth S. Svedeen, the latter, in charge of special effects and miniatures, in the prop shop. These two supervisors were instructed by Baker, about March 21, to cut prop makers from a force of 21 to about 11. According to Svedeen, he and Lydecker selected the individuals to lay off. Svedeen testified that no one was discharged or laid off because of his refusal to do carpentry work, that in this respect, the men's feelings were respected. He testified, however, that Ames was laid off because he would not perform his work as a prop maker and that he spent about half his time gathering up small crowds of employees and talking to them. It seems clear from Svedeen's testimony that prop makers who did obey respondent Republic's instructions to cross jurisdictional lines were laid off either before or on the day that Ames was laid off, and that some prop makers who refused to do carpentry work were not laid off.

The purport of Svedeen's testimony was, that Ames was laid off for lack of work and because he was the ringleader in starting discussions among the prop makers, who respected his opposition to crossing jurisdictional lines. Svedeen acknowledged that he never cautioned Ames but he did complain to Holson about the matter. Svedeen admitted also, that other individuals stood around talking, but he contended that no one was as prominent as Ames

in this respect. When Ames was laid off, these discussion groups had quieted down and according to Svedeen, Ames was performing his work satisfactorily.

In the lay off and in the later rehire of prop makers, respondent Republic made no effort to comply with the seniority clauses of the Local 44 contract, which provides generally that junior members of the Union shall be laid off before senior members in a job classification.<sup>38</sup> When Ames was laid off, junior members were retained. There is no showing however, that Ames possessed the qualifications of the prop makers retained.

The undersigned is satisfied from an examination of the record that respondent Republic curtailed its production in March, 1945, and that Ames, as well as other prop makers, who had refused to perform carpentry work were laid off in accordance with the new production schedule. Prop makers, however, who refused to perform carpentry work, were not laid off and respondent Republic followed no

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<sup>38</sup>The seniority section provides in part as follows:

B. The Producer shall have freedom of selection within the Senior Group for hiring, filling vacancies and making promotions, and shall not be required to lay off Senior members on any fixed basis.

C. Junior members in any job classification shall be laid off in all cases before any Senior members in such job classification are laid off. Upon request from the Union, a Junior member shall be replaced by a Senior member within a job classification, but no Junior member need be laid off until he has completed his current assignment.



set seniority pattern in determining who or who should not be retained. It also appears that respondent Republic hired two prop makers during the course of the strike, but it is not clear that Ames was qualified to perform the work of the prop makers thus hired. The undersigned is not persuaded in view of all the facts set forth above that Ames' refusal to perform carpentry work was the motivating cause for his lay off.

On a day following the end of the strike, Ames spoke to McDonell and told him that he wanted to come back to work. McDonell replied that Ames' "case" was different. He asked Ames if he had been on strike and Ames said, "No, but since I was laid off I have respected picket lines." McDonell told Ames he would check on his "case." That afternoon McDonell again asked Ames if he had been on strike. Ames replied, as he had previously stated in the morning, that he had been respecting picket lines since his lay off for refusal to do carpentry work. McDonell then said that he had been laid off because he was not a good prop maker. This was the first warning that Ames received that he was not an efficient workman. About January, 1946, some months after Ames had filed charges under the Act, he received a message from the Regional Office to call McDonell. Upon doing so McDonell advised Ames that respondent Republic would be glad to reinstate him; that the strike had been difficult for all; and that as soon as Ames informed McDonell when he wished to return McDonell would arrange



it. Ames replied that as soon as he was free to return, he would call McDonell. Following this conversation Ames never communicated with respondent Republic to notify it when he would be available to return to work. Thus, it appears that since January, 1946, Ames has not availed himself of the opportunity to return to work at the studio.

It seems clear that respondent Republic's failure to rehire Ames about October 31, was due to the fact that it was complying with Pelton's instructions of October 31, not to rehire any Alliance member who had refused to cross the picket line during the strike and that failure to rehire him from that time up to sometime in January, 1946, is attributable to those instructions. The undersigned so finds.

Ames was expelled from Local 44 of the Alliance on June 14, 1946, and respondent Republic was served with notice thereof.

#### 7. Respondent Loew—Case No. 21-C-2662.

The amended consolidated complaint alleges that respondent Loew discharged George I. Groth on or about March 23, 1945, and refused to reinstate him to his former position and discharged John L. Selgrath on or about March 24, 1945, and refused to reinstate him until December 19, 1945, and that the discharges and refusals to reinstate were due to the fact that the said employees refused to perform the work and take the jobs of striking employees. The answer denies any discrimination, but admits that about November 14, 1945, Selgrath made application

for reemployment which was refused, because of the fact that respondent Loew was advised by Local 80 of the Alliance, that Selgrath was not in good standing in the Union, and that upon being further advised about December 19, that Selgrath was now in good standing, he was offered employment.

George I. Groth first started to work for respondent Loew in January, 1942, as a member of the labor gang. Groth is a member of Local 727 of the Alliance.

On the morning of March 22, Groth was asked to fill holes and cracks with putty using a broad knife. Groth worked with his fingers, instead of using the knife; continued on his job for about 30 minutes; and then slipped out to the card rack to observe his time card. He noticed that his rate had been changed from that of a laborer to that of a painter.

On March 23, Groth reported to work at his accustomed place and was then sent to the leather room where, along with others he was handed a paint brush and painters' tools by a pusher. Groth told the pusher that he would not paint, and was sent to Herb Schuetze, the gang boss. On reporting to Schuetze, Groth was asked if he wanted to work and he replied, "Yes, but I don't want to paint." Groth accompanied by three or four other employees who had also refused to paint, started to leave the lot and upon reaching the gate were sent to the office of Fred Gabourie, superintendent of construction. There, Groth was told if he would not paint, he would not be paid. Thereupon Groth left the studio.

Groth had never done any painting of any kind during the history of his employment, nor had he performed any painter's work such as filling holes or cracks with putty. Groth testified that he refused to do the work of painters because he had never done anything but labor work in the studio and "painting is highly technical. I do not know the first thing about it. Besides it was someone else's work. I did not wish to do it." Groth admitted that he gave no reason to his supervisor for his refusals to paint, he just told them that he would not do it.

Groth returned to the studio on April 2, because, he testified, "I just wanted to go back to work." He reported to the scene dock where the laborers met and then he was sent to a stage by Schuetze. Paint brushes and painters' tools were again passed out but Groth refused to accept them. On his refusal, he was ordered to take his time card to Schuetze's office. Schuetze asked Groth if he wanted to work and Groth replied that he did but he did not wish to paint. Schuetze told Groth that he knew the "set up" and Groth left the lot.

Early in April, 1945, when Groth paid his union dues he told Orville Brown, financial secretary of the local, that he was willing and anxious to take a labor call. Brown, however, stated that things were in bad shape and that he could not give Groth "a straight labor call." In the latter part of October, Groth again repeated that he was eager to return to work for respondent Loew or get a job elsewhere and Brown informed him that he would do what he

could. Groth called the studio on November 3, 1945, and Schuetze asked him where he had been. Groth answered that he had been off. Schuetze stated: "As far as I am concerned, you are still off," and hung up. Groth started to work for the Hal Roach Studios on March 9, 1946, and since that date no longer desired reinstatement with respondent Loew.

John L. Selgrath has been employed by respondent Loew for about 20 years. Selgrath has been a key grip since 1933, and in March, 1945, was a member of Local 80. As a key grip, Selgrath was assigned to a camera man and on production, among other duties, supervised the moving of walls and the setting up and use of reflectors.

On March 23, 1945, Selgrath worked at his usual tasks as key grip and on the 24th his superior, Andy McDonald, the grip foreman, assigned him to do some carpentry work. Upon his refusal, Selgrath was instructed to report to William Barrett, business representative of Local 80. Selgrath told Barrett that he would not do carpentry work, whereupon Barrett called McDonald and told him to discharge Selgrath. Selgrath returned immediately to the studio and saw McDonald, who stated that he had no right to fire Selgrath and he did not know what to do. Selgrath then asked McDonald if arrangements could be made for him to see William R. Walsh, respondent Loew's labor relations director.<sup>39</sup>

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<sup>39</sup>Not to be confused with Richard F. Walsh, International President of the Alliance.



Selgrath saw Walsh on Monday, March 26. During a lengthy conversation, Selgrath asked Walsh what was going to be done with him. Walsh replied that he did not know. He would not discharge Selgrath nor would he lay him off. Selgrath then agreed to go home until the strike was over. Selgrath told Walsh that he would be willing to cross the picket lines to do his own work but he would not perform carpentry work.

Following Selgrath's conversation with Walsh, he saw Jerry Mayer, the studio manager. Present on this occasion in addition to Mayer and Selgrath, were Gabourie, superintendent of construction, Walsh and Hopper, assistant to General Manager Mannix. Mayer took the lead in the conversation and urged Selgrath and Employee Scoggins, who accompanied Selgrath, to return to work. Selgrath told Mayer that the issues precipitated by the strike should be settled by the union leaders and that his experiences during the strike of 1933, were such that he could not take the job of an employee who was out on strike.<sup>40</sup>

Following the meeting with Mayer, Hopper told

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<sup>40</sup>Selgrath testified: "I told him that in 1933, when I was working in the carpenter shop that this same thing had come up again, told him how that previous to that time how they came to the studio, if we didn't take a job as a grip or stand-by carpenter that we were fired, so I took that job, and told him about my daughter coming home one day from school and telling me that she couldn't play with the other kids because her dad was a scab. So that ended that."



Selgrath that General Manager Mannix wanted to see him. At this meeting, Mannix told Selgrath that he did not like to see him leave and tried to persuade Selgrath to help out by doing part time carpentry work and continue with his regular job. In addition, Mannix told Selgrath that the Carpenters Union was trying to take work away from the Alliance; that the Alliance was going to try to keep the studios open; and he suggested that Selgrath "stick" with his union and do whatever work was asked of him. Mannix was asked if Selgrath would be discharged for refusing to do carpentry work and Mannix replied that he did not think so. Selgrath asked if he could return to his regular work and Mannix answered that he do so by spending part of his time in the carpenter shop.<sup>41</sup>

Selgrath sought reinstatement on October 31, and saw McDonald who told him that he would consult Gabourie. McDonald later instructed Selgrath to return the next morning and that he would be re-employed as a key grip. When Selgrath came to work the next morning, he found his time card missing, and he was ordered to report to Gabourie, who in turn told him to report to his union. At the union offices, Barrett stated that there was nothing he could do for Selgrath.

On November 14, Selgrath wrote Walsh, in part, as follows:

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<sup>41</sup>In July and October 1945, Selgrath was offered his job provided he would work from 30 minutes to 2 days in the mill as a carpenter. Selgrath refused to accept employment under those conditions.

I now request reinstatement to my job without discrimination. I would appreciate an immediate reply advising me when I should report for work or the reasons for the demise of my request.

In reply, Walsh answered, on November 26, in part:

Please be advised that we operate the Grip Department by virtue of a closed-shop agreement with Local No. 80, I. A. T. S. E., and employ only members in good standing with that organization. At present your organization has advised us you are not in good standing with it. In the event your union advises us that you are in good standing, we will consider you for employment.<sup>42</sup>

Sometime after this, Local 80 instructed Selgrath to report for work on December 19, 1945. On reporting, Gabourie told Selgrath that there were no vacancies for key grips and that he would be hired as a new man at the rate of \$1.63 an hour instead of the rate of \$2.05 an hour for key grips. Although Gabourie had informed Selgrath that he was being rehired on December 19, as a new man, he was given his old clock number and deduction authorizations for various purposes which Selgrath had previously executed were continued in force and operation after his return. At the time of the hearing Selgrath was still employed as a grip. He testified that key grips were on a weekly salary of \$139.50 for about a 60-hour week.

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<sup>42</sup>Selgrath testified that he was always a member of Local 80 and that he was never advised by the union that he was not in good standing.

It appears clear from the facts found above, that Selgrath was neither discharged nor laid off and was offered every inducement to continue his work as a key company grip provided that he would spend part of his regular hours of employment doing carpentry work. This Selgrath refused to do, voluntarily abstaining from his job, because of personal convictions that he could not perform any part of the work of employees out on strike or supporting the strike. The undersigned so finds. The discrimination, if any, with respect to Selgrath, in the undersigned's opinion therefore, rests on respondent Loew's action taken on and after October 31, when Selgrath sought reinstatement as a key company grip. In this connection Walsh testified that either on October 31, or November 1, Barrett telephoned and told him that Selgrath had not worked during the strike and was not to be returned to work because he was no longer in good standing in Local 80.<sup>43</sup> In addition, Walsh received a copy of Pelton's instructions to members of the Association. He testified that those instructions applied equally to both Selgrath and Groth. About December 19, Walsh was advised by Local 80 that Selgrath had been cleared for rehire. It was pursuant to this advice that Selgrath was then reemployed as a grip on December 19, 1945.

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<sup>43</sup>At this time Selgrath's job had been taken by his assistant Carl Reed, who resigned in March 1946. The job has not been filled, there being no need, according to Walsh, to fill the post.

## 8. Respondent Twentieth Century—Case No. 21-C-2664.

The amended consolidated complaint alleges that respondent Twentieth Century refused to reinstate Eugene V. H. Mailes to his former position of greensman, between October 31, 1945, and February 18, 1946, because Mailes refused to pass the picket lines during the strike. Respondent Twentieth Century answers this by general denial and avers further that on June 14, 1946, it was notified that Mailes had been expelled from membership in Local 44 of the Alliance; that respondent Twentieth Century had entered into a closed-shop contract with Local 44 covering Mailes' classification, and pursuant thereto, only workers who are members in good standing of the Alliance could be hired.

Mailes has been employed by respondent Twentieth Century for about 2½ years as a greensman. Mailes joined Local 44 in 1939. He was expelled from the Union on June 14, 1946.

Mailes worked at his regular job during the entire course of the strike and up to October 1, 1945. During that time Mailes performed certain work over which no clear jurisdictional lines had been established. However, he was never asked to perform any work over which the Carpenters' jurisdiction had been clearly established. On October 1, 1945, Mailes went on his regular vacation. An employee's vacation notice introduced in evidence shows that Mailes' vacation with pay was approved for a pay period of 12 days from October 1 to October 13,



1945. Mailes did not return to the studio on Monday, October 15, the day he was scheduled to return from his vacation. Instead he called the studio and spoke to Fred Lutz, assistant chief of his department, on the morning shift.

Mailes testified that when he spoke to Lutz on October 15, he asked for an extension of his vacation, on the ground that he believed that he might be helpful in settling the strike and that Lutz stated that he would hold up his vacation slip until he was informed to the contrary. Whether in doing so Lutz exceeded his authority, Mailes was unable to state. He testified that he assumed that Lutz as a responsible assistant department chief, had such authority. Lutz testified, however, that he could recall no specific conversation with Mailes about exceeding his vacation. He testified moreover, that he had no authority to do so. He admitted that he had held a number of conversations with Mailes but he could not distinguish one talk from another. Lutz was not a persuasive witness. His testimony was general in nature and at times contradictory. The undersigned is satisfied that on or about October 15, Mailes did telephone to Lutz and asked for a vacation extension. There seems no doubt concerning Lutz's general supervisory authority. In his capacity as a supervisor, he spent most of his time in the office and gave instructions to foremen. The undersigned finds therefore, that Mailes did ask for an extension of his vacation and that he had reasonable grounds for belief, as the result of his conversation with Lutz, that his vacation had been extended.



About October 18, Mailes spoke to Charles Hickson, assistant chief of the department, on the afternoon shift, and told him that because of increased violence he preferred to remain away from the studio. Hickson replied that this was satisfactory; Nick Kalten, the head of the greens department, understood the situation and did not want any of his employees to take chances.<sup>44</sup> These findings are based upon Mailes' undenied and credible testimony.<sup>45</sup>

Following the announcement of the strike settlement about October 29, Mailes went to his union to pay his dues. Then he called Lutz and asked for permission to return to work on his regular shift. Although Lutz could not recall anything about the request from Mailes to return to work, he did acknowledge that Mailes telephoned him seeking reinstatement and that he instructed Mailes to contact his local, because the union had advised the studio that Mailes "had lost his card, or wasn't in favor with the union, or something." Secretary Hill told Mailes that Brewer was not satisfied with the way Mailes had spent his time since October 1. Then Mailes went to the studio and spoke to Kalten. Mailes asked Kalten if he could return to work but Kalten was noncommittal stating that he would

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<sup>44</sup>There had been no violence on the picket line around respondent Twentieth Century's studio during the month of September, and Mailes knew of no violence during the month of October. It does appear that there was violence elsewhere about this time.

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<sup>45</sup>Neither Hickson nor Kalten testified.

have to check with Meyer, the personnel manager, and further that Mailes was the only individual who had caused his department any difficulty.

On November 12, 1945, Mailes saw Meyer at the studio. Meyer stated that the studio was willing to reinstate him if the union had no objection. Mailes replied that all he knew was that he could not work. Meyer then stated that according to his information, based upon pay roll department records, Mailes had quit his job. Mailes replied that he had gone on vacation; that his vacation had been extended by Lutz; that thereafter Hickson had given further permission to stay out; and subsequently, Mailes had gone to the union, paid his dues, sought reinstatement through Kalten and had been unsuccessful up to date.

Respondent Twentieth Century introduced in evidence a record entitled "Daily Report Of Changes In Personnel," dated October 13, 1945, which purported to show that, effective as of that date, Mailes had been marked off the pay roll. How this document could be dated October 13, when Mailes was not due to return from his vacation until October 15, is not clearly explained. Lutz testified that a close-out sheet would not be made out in the case of an employee whose vacation had been extended. Lutz had nothing to do with the preparation of the document and he could not remember talking to Kalten about it. Lutz also acknowledged that despite a close-out, a regular employee such as Mailes would be rehired if there was work to do. Finally, Lutz testified that

the close-out sheet was made, in the case of Mailes, because he failed to return to work within 6 days after his vacation ended. This still does not explain the effective date of October 13. The undersigned is not convinced that this document is entitled to serious consideration. The effective date renders it suspicious, as well as the fact that Lutz's testimony concerning it was not specific, and Kalten was not produced as a witness to testify concerning its preparation or his signature on the document. The undersigned finds, therefore, that the document can be accorded no weight to support the respondent's theory that Mailes voluntarily quit his employment.

In the latter part of January 1946, Mailes was informed that the way had been cleared for him to return to the studio. Mailes went to the studio and saw Lutz, telling him that he now understood that he could return to work. Lutz, however, stated that there had been no change in his status. Thereupon, Mailes called Meyer and explained to him what he had been told. Meyer explained that he had no objection to Mailes' employment but that all hiring was done through the union and that if Mailes was sent to the studio by Local 44, Meyer would hire him. Sometime thereafter Mailes protested to Secretary Hill that he was not being recalled, whereas permit greensmen were at work in the studio. About the middle of February, 1946, Mailes was reemployed at his regular job on the afternoon shift in the landscape department. In this connection DuVal testified that Mailes was entitled to his job over any permit man employed in November, 1945, provided

Mailes was a member in good standing.<sup>46</sup> To DuVal's knowledge, Mailes was in good standing in the union at that time. He had not been suspended or expelled.

Mailes continued to work for respondent Twentieth Century until June 16, 1946, when the studio notified him of his expulsion from the union and he was laid off.

#### 9. Respondent RKO—Case No. 21-C-2665.

The case of Forrest McLoney alleged to have been refused employment by respondent RKO from October 31 to December 27, 1945, was dismissed at the hearing on motion of counsel for the Board. It will be recommended hereafter that the complaint be dismissed in respect to respondent RKO.

#### D. Conclusions.

The foregoing covers in detail the employment history of each complainant after March 12, 1945. There is no single uniform pattern of conduct applicable to all. The various cases separate themselves into three main classifications with separate in-group distinctions: Those who were discharged outright for refusal to perform the work of a striker;<sup>47</sup> those who refused to perform assigned

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<sup>46</sup>Under Local 44's policy of policing its contracts, permit men were replaced by unemployed members of equal skill.

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<sup>47</sup>Batchelder, Bonning, DeSanctis, Gidlund, Hand, Jensen, Lamb, Lora, MacKellar, Rogers, Sapp, Simpson, Stoica and White.



work, some of whom were denied discharge slips or availability slips and either were sent to their unions or went home and were subsequently refused reinstatement;<sup>48</sup> and finally those who voluntarily absented themselves during the strike or refused to cross the picket lines and were thereafter denied reinstatement.<sup>49</sup>

The rights of the complainants, if any, rest upon law applicable to these broad fact situations. At the outset however, there must be considered the strike of Painters Local 1421, which set in motion the chain of events culminating in this proceeding. On the final day of the hearing, respondents' counsel asked the undersigned and the Board to take judicial notice of a long series of administrative and procedural matters, commencing with the request for a strike vote filed by Local 1421 on December 6, 1944, under the provisions of the War Labor Disputes Act, including the respective unit contentions and dispute between Local 1421 and the Alliance over the right to represent set decorators, and ending with the representation hearing held from March 7 to 17, 1945, on the consolidated petitions of certain respondent Producers<sup>50</sup> and the unions<sup>51</sup> involved.

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<sup>48</sup>Ames, Cuccia, Groth, Hentschel, Larson, Selgrath, and Seward.

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<sup>49</sup>Coffey, Goudie, Howe, Mailes and Stanley.

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<sup>50</sup>Case No. 21-RE-20.

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<sup>51</sup>Case Nos. 21-R-2630, 21-R-2622, 21-R-2624, 2625, 2626, 2627, 2628, 2629 and 2630.



At the conclusion of the request to take judicial notice of the foregoing matters, counsel for the Board and for the individual complainants asked for an expression of the undersigned's intention. The undersigned stated that he had no authority to bind the Board to take judicial notice of the various matters, stating, however, that decisions of the Board and its opinions were controlling upon the undersigned. Counsel urged that the request was in effect an offer of evidence to take judicial notice of certain facts and that the materiality of the facts was as much in issue as if the same facts had been presented through an offer of proof. It was further urged that in the absence of a ruling counsel would then consider the request covered material matters and an opportunity was therefore desired to introduce further evidence on the same subjects, which would require presentation of a number of witnesses and the preparation of documents.

Counsel objected to a consideration of the matters for the reason, not that they were matters of which the Board could not take judicial notice, but on the ground that they were incompetent, irrelevant, and immaterial to any issue in this proceeding. Respondents' counsel urged that these were matters of which the Board must take judicial knowledge and that there was nothing for the undersigned to rule upon. In view of these objections, the undersigned ruled for the purpose of this proceeding, that he would treat the request as an offer of proof and that had it been made as an offer it would have

been rejected for immateriality. Because of this opinion that the matters referred to are immaterial, the undersigned has not taken judicial notice of those matters. The undersigned, however, does recognize and has taken judicial notice of and referred to the opinion of the Board in *Matter of Columbia Pictures, et al.*<sup>52</sup>

The ultimate question herein presented for consideration and resolution, is whether the Act and applicable law as found by the Board and sustained by the courts, give employees the right by concerted action to refuse to take the jobs of striking employees or perform work vacated by striking employees, or those who although not striking, by absenting themselves from work, support the strike.

Subsidiary to the main question above, is the other, whether the complainants herein, by their action, in withholding services for all reasons assigned, did thereby engage in a "partial strike" of a nature which warrants protection of the Board, in the absence of any unfair labor practice on the part of the employers. First there is to be considered, those cases wherein the concerted activity was followed by discharge and the other group of cases wherein the discrimination, if any, following a voluntary abstention from work, was in the refusal to reinstate. There also arises the question of whether the conduct was unlawful, because taken to support a strike, called by another union, of which the complainants

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<sup>52</sup>64 N.L.R.B. 490, 17 L.R.R. 290 (1945).

were not members, during the course of a representation hearing.

### 1. The Discharge Cases.

There is no showing here that the action of the complainants was in violation of contract or otherwise violative of Board policy, and there is, in the undersigned's opinion, no element of unlawfulness which presents itself for consideration. Section 7 of the Act, expressly guarantees employees the right to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection. By Section 2 (9) of the Act, the term "labor dispute" includes any controversy concerning terms, tenure, or conditions of employment. By Section 2 (3), an employee who ceases work because of, or in connection with a current labor dispute retains his employment status by virtue of Section 2 (3) and (9) and the complainants were thereby entitled to the protection of the Act.<sup>53</sup>

In *Carter Carburetor Corporation v. N.L.R.B.*<sup>54</sup> the Circuit Court of Appeals stated:

Section 7 gives employees the right "to engage in concerted activities, or for the purpose of collective bargaining or other mutual aid or protection." This "mutual aid" and "concerted activities" include, we think, the right to join other workers in quitting work in protest over the treatment of a co-employee,

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<sup>53</sup>*N.L.R.B. v. Mackay Radio & Telegraph Co.*, 304 U. S. 333; *N.L.R.B. v. American Manufacturing Company*, 106 F. 2d. 61 (C.C.A. 2).

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<sup>54</sup>140 F. 2d. 714 (C.C.A. 8).

or supporting him in any other grievance connected with his work or his employer's conduct.<sup>55</sup>

Applying the above principles to facts found above, it is clear that 14 prop makers, members of Local 44,<sup>56</sup> all employees of respondent Warner, were because of their concerted protests against their employer's direction to have them work as strike breakers discharged on March 19, 1945. The jobs they were asked to fill were those of strikers and their refusal to take them was due to the fact that compliance would have placed them in the position of helping to break a strike.<sup>57</sup> Their refusal, accord-

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<sup>55</sup>Citing *N.L.R.B. v. Peter Cailler Kohler Swiss Chocolates Co.*, 130 F. 2d. 503 (C.C.A. 2); *Firth Carpet Co. v. N.L.R.B.*, 129 F. 2d. 633 (C.C.A. 2); *N.L.R.B. v. Good Coal Co.*, 110 F. 2d. 501 (C.C.A. 6); *Rapid Roller Co. v. N.L.R.B.*, 126 F. 2d. 452 (C.C.A. 7).

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<sup>56</sup>Batchelder, Bonning, DeSanctis, Gidlund, Hand, Jensen, Lamb, Lora, MacKellar, Rogers, Sapp, Simpson, Stoica and White.

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<sup>57</sup>"Certainly nothing elsewhere in the Act limits the scope of the language to 'activities' designed to benefit other 'employees'; and its rationale forbids such a limitation. When all the other workmen in a shop make common cause with a fellow workman over his separate grievance, and go out on strike in his support, they engage in a 'concerted activity' for 'mutual aid or protection,' although the aggrieved workman is the only one of them who has any immediate stake in the outcome. The rest know that by their action each one of them assures himself, in case his turn ever comes, of the support of the one whom they are all then helping; and the solidarity so established is 'mutual aid' in the most literal sense, as nobody doubts. So, too, of those engaging



ingly, constituted concerted activity protected by the Act and their discharge insofar as they were motivated by such refusals were discriminatory.<sup>58</sup>

Before passing to a consideration of the other cases attention is focused upon another line of cases cited by respondents and Intervenor Alliance, under authority of which if applicable, a discharge for concerted activity and a refusal to reinstate which thereafter follows, would be held nondiscriminatory, because the concerted protest or activity was in support of an "unlawful strike," violative of Board policy. In principal support thereof, is cited the line of cases starting with and following the Board's decision in the American News case.<sup>59</sup>

The Board laid down the principle in *American News*, that strikers whose objective was to induce the employer to give them a wage increase, without prior approval from the War Labor Board, as required by Executive Order under the Stabilization Act, were not engaged in "concerted activity" of

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in a 'sympathetic strike,' or secondary boycott; the immediate quarrel does not concern them, but by extending the number of those who will make the enemy of one the enemy of all, the power of each is vastly increased." *N.L.R.B. v. Peter Cailler Kohler Swiss Chocolates Co., Inc.*, 130 F. 2d. 503, 505, 506 (C.C.A. 2).

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<sup>58</sup>*N. L. R. B. v. J. G. Boswell Company, et al.* 136 F. 2d. 585 (C.C.A. 9); *United Biscuit Co. v. N.L.R.B.* 128 F. 2d. 771 (C.C.A. 7); *Rapid Roller Co. v. N.L.R.B.*, 126 F. 2d. 452 (C.C.A. 7).

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<sup>59</sup>*Matter of The American News Co., Inc.*, 55 N. L. R.B. 1302.



the kind protected by Section 7 of the Act. Accordingly, the employer's treatment of the strikers' action, the termination of their employment, and his refusal to reinstate all men were held not to constitute an unfair labor practice. The serious impropriety in the labor conduct there involved was clearly plain, since the employer's compliance with the strikers' objective would have subjected him to criminal penalties under Wage Stabilization legislation.

Whether the "illegal objectives" test should be applied here in the instant proceeding requires reference to the Columbia Pictures case<sup>60</sup> and the Board's opinion therein. There the Board had before it the strike precipitated by Local 1421 on March 12, 1945, and which thereafter, during its course, gave rise to the actions of the complainants herein. Respondent's theory in short is, since the strike of Local 1421 was called for an improper objective, applying the "illegal objective" test of American News, the action taken by employees, who were not members of Local 1421, in support of an improper objective, places these latter employees in no better or different position than those who were members of Local 1421, and since the discharge of Local 1421 members would have been justified, similar action against nonmembers for supporting the unlawful strike is likewise privileged.

The theory thus advanced is rejected for two reasons. The Board in Columbia Pictures did not

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<sup>60</sup>Matter of Columbia Pictures Corporation, et al., 64 N.L.R.B. 490.

pass on the alleged illegality of the strike, holding:

We find it unnecessary to decide whether or not it would have been an unfair labor practice had the Producers granted recognition, the object sought by the Painters; assuming arguendo that such was the case, we nevertheless are of the opinion that the doctrine of the *American News* case is not applicable to the instant situation.<sup>61</sup>

The Board went on to distinguish the *American News* case pointing out that the strike therein prosecuted to compel an employer to violate the Wage Stabilization statute, was the kind of an action to which the Act should be accommodated if this could reasonably be done. In pointing this out, the Board stated that it regarded:

The decision in the *American News* case as one of narrow application, intended to apply primarily to a situation in which employees deliberately and knowingly strike to compel an employer to violate a statute which, when read in the setting in which it was enacted, manifested the inexorable intention of the Congress that its mandate be obeyed.<sup>62</sup>

That was not the situation in the *Columbia Pictures* case, the Board said. It was further pointed out that the Board was satisfied that the Painters had struck to secure an objective which that union and its members believed themselves entitled to under the Act. They were entirely unaware that

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<sup>61</sup>64 N.L.R.B. 490, 511.

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<sup>62</sup>*Id.* at 512.

recognition by the Producers at that moment might have constituted an unfair labor practice. The Board stated that a strike called during the Board's hearing and investigation to resolve the question at issue in the strike showed a disregard for the orderly processes of the Board, but it found nothing in the Act, and its legislative history, or in court decisions thereunder, which pointed to the conclusion "that the strikers' conduct . . . removed them from the ambit of the Act. On the contrary, the language of the Act and the decisions of the Board and the courts make plain that a strike of this character—to obtain recognition and collective bargaining—is within the 'concerted activities' contemplated therein and cannot render strikers vulnerable to loss of their status as 'employees' because this is their purpose.'"<sup>63</sup>

Thus it is clear that the Board has not passed upon the legality of the strikers' conduct in the Columbia Pictures case, and in fact held moreover, that the strike therein was a concerted activity.

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<sup>63</sup>*Id.* at 514. In the Peter Cailler decision cited *supra*, the court at p. 506 said: "But so long as the activity' is not unlawful, we can see no justification for making it the occasion for a discharge . . ." In five other decisions, the Board has found occasion to discuss the American News doctrine and has deemed that doctrine inapplicable in all cases. See *Fairmont Creamery Co.*, 64 N.L.R.B. 824 (1945); *Rockwood Stove Works*, 63 N.L.R.B. 1297 (1945); *Republic Steel Corp.*, 62 N.L.R.B. 1008 (1945); *Indiana Desk Co.*, 58 N.L.R.B. 48 (1944); *S. & S. Cone Corp.*, 57 N.L.R.B. 260 (1944).

This being so, the undersigned cannot accept the premise that the strikers' conduct therein was illegal and that the complainants' action herein was any the less legal. Certainly, the complainants who did not strike and were not members of the striking unions should not be placed in a more hazardous position than the strikers, whose activity has been protected. For these reasons also, cases such as the Phelps Dodge Copper case are not deemed apposite to the situation here presented.<sup>64</sup>

The second reason for rejecting the doctrine of American News as applicable here, is that there can be no justifiable finding that the complainants "deliberately and knowingly" struck to compel an employer to violate either Board policy or statute. They exercised their protest against doing strikers' jobs, a concerted activity, as heretofore found. Their concerted protest was not to force the respondent Producers to accomplish an illegal purpose but rather to permit continuance of fixed and determined patterns of work and conditions of employment. In this aspect of the case they are not on the same or equal footing as the primary

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<sup>64</sup>63 N.L.R.B. 686, 687. Where the Board held: "We are of the opinion that if, during the pendency of an election directed by the Board to resolve a question concerning representation, an employer extends or renews an existing contract with a labor organization, or makes a new one, he violates the Act insofar as that organization is accorded recognition as exclusive bargaining representative or employees are required to become or remain members thereof as a condition of employment."



strikers. The complainants were in fact willing to work during the strike. They asked only that they be permitted to continue their accustomed employment. This they had a legal right to do.<sup>65</sup> All the complainants herein stand on a different footing than the primary strikers and their rights rest upon established principles of law which protect the type of concerted activity in which they engaged.<sup>66</sup>

## 2. Refusals to reinstate.

The legal rights of the complainants who were not discharged, but who on and after October 31, 1945, were refused reinstatement to their former jobs, rest upon other considerations now pertinent.

It will be recalled that on the afternoon of October 31, 1945, Pelton issued instructions to all the respondent Producers, that Alliance members who refused to come to work during the strike, were not to be returned to their regular jobs without approval of the Alliance. These instructions came

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<sup>65</sup>Matter of Firth Carpet Company, 33 N.L.R.B. 191; enforced *Firth Carpet Co. v. N.L.R.B.*, 129 F. 2d. 633 (C.C.A. 2).

<sup>66</sup>It is clear that the complainants were not members of the striking union. Lack of membership in the union or ineligibility for membership is immaterial. Nonunion members may join sympathetically in the activity of a union in which they are not eligible for membership without relinquishing the protection afforded by the Act. See *Matter of Club Troika, Inc.*, 2 N.L.R.B. 90, 94; *N.L.R.B. v. Biles-Coleman Lumber Co.*, 98 F. 2d. 18 (C.C.A. 9).



from B. B. Kahane, chairman of the Producers Labor Committee. Pelton could not recall any discussion of this document or its contents with Alliance officials. Yet it seems incredible, that it could have been issued without prior consultation by some Producers' representative. There is abundant proof that all complainants were refused reinstatement on and after October 31, 1945, and in those instances where reinstatement had occurred, lay-offs followed, the instructions thus being completely obeyed. Later reinstatements as in the case of DeSanctis and Selgrath for example, were had only with Alliance approval.

This record contains no evidence that on October 31, any of the complainants had "bolted" from their locals; although it is true that by refusing to cross jurisdictional lines they had not complied with instructions of their International President.<sup>67</sup> Nor is there persuasive evidence that any

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<sup>67</sup>In Matter of Washougal Woolen Mills, 23 N.L.R.B. 1, certain employees joined a walk-out of other employees over a labor dispute. The Board held; "... these employees, by leaving the plant, did not intend thereby permanently to discontinue the normal employer-employee relationship, and that these employees were engaging in concerted action to secure a demand with respect to terms and conditions of employment. Whether or not this concerted action was authorized by the Union is, of course, immaterial in this connection. We find that the employees who participated in the walk-out remained employees within Section 2 (3) of the Act." The undersigned also believes it immaterial that certain employees asked for and obtained avail-

complainant was at this time expelled or under suspension from his local. So far as the record indicates they were all in good standing as Alliance members. In short, they were denied reinstatement to their regular jobs because the respondent Producers followed instructions emanating from their Labor Committee, fashioned to punish union members for daring to protest orders to cross jurisdictional lines. In the undersigned's opinion this is a clear case of refusal to reinstate for engaging in concerted activities protected by the Act and it is so found. As in the case of the discharged employees, those individuals who voluntarily absented themselves, or refused to perform assigned work and were sent home still remained employees for the purposes of the Act. The refusal to reinstate was due to the fact that each had engaged in withholding his labor, "a partial strike." A partial strike is a form of concerted activity that is protected under the Act.<sup>68</sup>

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ability slips. At that time they were needed to procure employment elsewhere, in the absence of which, the respondents could legitimately protest failure to look for and obtain work.

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<sup>68</sup>By virtue of Section 2 (3) and (9), the individuals here concerned remained employees after the date that their concerted activity commenced and were thereafter entitled to the protection of the Act. *N.L.R.B. v. Mackay Radio & Telegraph Co.*, 304 U. S. 333; *Rapid Roller Co. vs. N.L.R.B.*, 126 F. 2d. 452 (C.C.A. 73,; *Black Diamond S. S. Corp. v. N.L.R.B.*, 94 F. 2d. 875 (C.C.A. 2); *N.L.R.B. v. Good Coal Co.*, 110 F. 2d. 501 (C.C.A. 6). Moreover, whether or not they were employees of the respond-

Upon the entire record, the undersigned finds that respondent Warner discharged 14 prop makers on March 19, 1945, and that respondent Producers refused on or about October 31, 1945, to reinstate all of the complainants herein, because of their concerted activities, thereby discriminating in regard to the hire and tenure of employment of such employees and that the respondents thereby engaged in unfair labor practices within the meaning of Section 8(3) of the Act. It is found further that by such action, the respondents have interfered with, restrained, and coerced their employees in the exercise of the rights guaranteed in Section 7 of the Act.

E. Interference, restraint and coercion

The amended consolidated complaint alleges that on or about March 19, 1945, respondents interfered with, restrained, and coerced their employees in the exercise of the rights guaranteed in the Act, by threatening employees that they would never work in the motion picture industry again, if they refused to perform the work or take the jobs of striking employees. In compliance with an order of the undersigned, counsel for the Board furnished an oral bill of particulars to respondents' counsel stating that foregoing allegation applied to a statement

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ent Producers, a refusal to employ them for unlawful reasons would contravene Section 8 (1) and (3) of the Act. *Phelps-Dodge Corp. v. N.L.R.B.*, 313 U. S. 177; *N.L.R.B. v. Waumbec Mills*, 114 F. 2d. 226 (C.C.A. 1).

made by Francis E. Fuhrmann, head of respondent Warner's prop department, on March 19, 1945.

Witnesses testifying on behalf of the Board,<sup>69</sup> testified that on the morning of March 19, 1945, Fuhrmann stated to the assembled prop makers, during the course of the meeting heretofore referred to, that in the event the prop makers refused to comply with his instructions to go into the carpenters' shop and perform the work of striking carpenters, for their refusal to do so, they would not be able to work in the motion picture industry again. Sapp and Lora testified that Fuhrmann used the word "eliminated." White and Batchelder testified that Fuhrmann stated that the prop makers would not be permitted to work in the industry again. Fuhrmann when questioned concerning this testimony acknowledged that he said that in the event they refused to do carpentry work they would be terminated "with the studio and would no longer work there." He denied that he had stated that they would no longer work "in the industry." The undersigned credits testimony of Board witnesses, substantially in accord as it was, and finds that Fuhrman made the statement attributed to him and that in effect he warned the employees that for their refusal to labor as carpenters they would not be permitted to work again in the motion picture industry. By the said statement, respondent Warner interfered with, restrained, and coerced its

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<sup>69</sup>Batchelder, Lora, Sapp and White.



employees in the exercise of the rights guaranteed in Section 7 of the Act.<sup>70</sup>

It will be recommended hereafter that this allegation of the complaint be dismissed respecting the other respondents joined in the amended consolidated complaint.

F. Alleged interference, restraint and coercion

The amended consolidated complaint alleged further that the respondents engaged in interference, restraint and coercion by the payment of bonuses to those employees who passed the picket lines or performed the work of the strikers during the strike of March 12. This allegation raises for detailed consideration voluminous testimony concerning the circumstances under which the strike was settled and particularly the so-called, "Cincinnati Agreement."

While the strike was in progress, between October 15 and 24, 1945, the Executive Council of the American Federation of Labor met at Cincinnati, Ohio. There issued from the council meeting the following directive:

International Alliance of Theatrical Stage  
Employeesd and Moving Picture Machine  
Operators of the United States and Canada—

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<sup>70</sup>No evidence was adduced in support of the allegation that the respondents interrogated employees with respect to their union membership and affiliations. It will be recommended hereafter that this allegation of the amended consolidated complaint be dismissed with respect to all respondents.



Brotherhood of Painters, Decorators and Paperhangers of America—United Brotherhood of Carpenters and Joiners of America, Et Cetera.

### Hollywood Studio Union Strike and Jurisdiction Controversy.

1. The Council directs that the Hollywood strike be terminated immediately.
2. That all employees return to work immediately.
3. That for a period of thirty days the International Unions affected make every attempt to settle the jurisdictional questions involved in the dispute.
4. That after the expiration of thirty days a committee of three members of the Executive Council of the American Federation of Labor shall investigate and determine within thirty days all jurisdictional questions still involved.
5. That all parties concerned, the International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada; the United Brotherhood of Carpenters and Joiners of America; the International Association of Machinists; the United Association of Plumbers and Steam Fitters of the United States and Canada; the Brotherhood of Painters, Decorators and Paperhangers of America; the International Brotherhood of Electrical Work-

ers of America, and the Building Service Employees' International Union, accept as final and binding such decisions and determinations as the Executive Council committee of three may finally render.

The striking employees returned to work on October 31, 1945. Under the terms of the Cincinnati Directive the first 30 days thereafter were to be used by committees in Hollywood in an attempt to compose jurisdictional differences. Any differences then remaining unsettled, were to be adjusted during the following 30-day period by the three-man committee appointed by the Executive Council whose decision was to be final and binding on all the parties. Under the Cincinnati Directive "all employees" were to return to work immediately. There arose, however, after the issuance of the directive on or about October 25, the question whether those individuals who would eventually be replaced by the returning strikers, were to work in the studios along with them. Leaders of the Conference of Studio Unions demanded that the replaced individuals be taken off the lots. Walsh, president of the Alliance, however, contended that this was contrary to the directive.

In order to resolve this question, representatives of the parties convened in Washington to review the minutes of the Executive Council. The Producers were represented at Washington by Mannix, of respondent Loew, Eric Johnston, who was later to become president of the respondent Association,

and others. As a result of this trip to Washington a clarification was issued, to the effect, that the respondent Producers should use their judgment in determining whether the replaced workers, who were members of the Alliance, should or should not work during the ensuing 60-day period, side by side, with members of the Conference of Studio Unions who were returning to work. This clarification was issued in time to permit the return to work of the strikers on October 31, 1945.<sup>71</sup>

Under the clarification, it had been agreed that all men on call on March 12, 1945, the day the strike started, were to return to those jobs and all who might be displaced at the end of the 60-day period by the settling of jurisdictions were to be given other employment in the studios during that period. Instead of the replacements working during that 60-day period, about November 12, it was decided to pay off the replacements in a lump sum and they were not required to report thereafter, unless the Producers asked for them. This lump sum was based upon the classification rate on October 31, 1945, and was adjusted to the normal working time for the ensuing 60-day period. Some of the workers who received this lump sum award did, in fact, after receiving it take other jobs in the industry, and were of course paid for work performed on other jobs.

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<sup>71</sup>During the strike, in addition to Alliance members who had crossed jurisdiction lines to take the jobs of strikers, Alliance locals had furnished employees to fill vacated jobs.

The original settlement had contemplated that "all employees" would work during the 60-day period, but because of the position taken by the Conference, that its members would not work with the replacements on or after October 31, rather than upset the settlement agreement, President Walsh of the Alliance agreed to the proposition that an additional award would be made to certain categories of workers. It had been agreed that pay for the 60-day period was to go only to those workers who were on the pay rolls as of October 31. However, those not on the pay roll as of that date, but who had previously worked for 15 days or more as replacements during the strike, were to receive another award, computed at the rate of \$3.50 a day for every day they had worked out of their jurisdiction during the strike. This award was agreed to at or about the time of the Cincinnati agreement and it would appear that no suggestion had been made at any time during the strike and up to October 25, 1945, that any person who had worked during the strike would receive any money other than the regular amount for work performed.

The \$3.50 award went to some workers who were totally displaced and to others who were not at work on October 31. Some of them had worked a few days, others during most of the period. No man who received the \$3.50 a day settlement received the 60-day award. In addition, those workers, who, for example, as prop makers had gone into the carpenter shop and performed the work of carpenters dur-

ing the strike, and who after October 31, returned to their original jobs as prop makers, did receive an award based upon \$3.50 a day for all days that they had worked outside of their jurisdiction. At respondent Warner, several hundred employees, under Fuhrmann's supervision, received the extra compensation of \$3.50 a day for every day those employees had gone outside their jurisdiction to work as carpenters. This award was made to them some time in March or April 1946, while they were regularly employed in their original jurisdictions. Fuhrmann testified that he never heard the \$3.50 a day award referred to as "severance pay" and understood, according to his testimony, that it was given as extra compensation to employees for working outside of their jurisdictions during the strike.

There is one additional payment which is not explained by any of the foregoing facts. Geza Gasper, foreman of the prop makers at respondent Columbia, testified that in the spring of 1946, he received a bonus check of some \$900, which represented his salary for a period of about 8 weeks. Gasper acknowledged that during the strike he acted at times as foreman in the carpenter shop.

The foregoing covers in substantial detail the matter of extra compensation paid pursuant to the Cincinnati Directive for work performed during the strike. In the undersigned's opinion not all the details and intricacies of the financial arrangements were fully disclosed and brought forth. Undoubtedly, there were certain applications of the Cincin-



nati Directive and payments made to many workers which did not fit precisely into the situations set forth above.

However, the question remains whether these facts sustain the allegation of the amended consolidated complaint that payment of the above awards to employees who passed the picket lines or performed the work of strikers, constituted interference, restraint and coercion on the part of the respondents. In the undersigned's opinion, crucial to a finding that the Board's complaint in this respect has been sustained, is some element of proof that workers were promised or told that for their conduct in passing through the picket lines or performing the work of strikers, they would receive in addition to their fixed compensation, an additional bonus and that the bonus became an inducement to the workers to help break the strike. Although such may have been the case either by rumor or assurance on the part of representatives of the Alliance and the respondents, there is no testimony in this record, that prior to October 25, 1945, any worker had been given to understand that he would for his conduct during the strike participate in the declaration of a bonus. Rather it appears affirmatively, that the first knowledge that such a bonus would be declared or granted became known on or after October 25, when the strike had been settled and under the terms of the Cincinnati agreement, arrangements had been made to return the strikers to their old jobs.

It appears clear that the Executive Council of the American Federation of Labor by reason of its directive, had ordered "all workers" to return pending a determination of the jurisdictional conflict and that during this period they would be paid for the time spent on the job. Presumably, the commitment to pay all workers, strikers, and non-strikers alike for the 60-day period was acceptable to all parties who had participated in the Cincinnati agreement. This payment under no circumstances, could be considered an inducement to any worker to cross picket lines or take the jobs of striking employees. It is not quite as clear in the application of the \$3.50 payment, given to those who worked 15 days or more during the course of the strike. But here again, this additional award was not held out as an inducement, at any time, to the individuals who received it, to induce them to cross picket lines.

It is true that because of these financial arrangements, those who worked during the strike or took the jobs of strikers fared better financially than the strikers or those who by their concerted protest refused to work. But there is in the undersigned's opinion, an absence of any element of proof nor can it by logical deduction be found that the financial payment interfered with, restrained or coerced the respondents' employees. It will be recommended hereafter that this allegation of the complaint be dismissed in respect to all respondents.

## IV.

The effect of the unfair labor  
practices upon commerce

The activities of the respondents set forth in Section III above, occurring in connection with the operations of the respondents described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to and have led to labor disputes burdening and obstructing commerce and the free flow of commerce.

## V.

## The remedy

Having found that the respondent Warner violated Section 8 (1), and that all the respondents violated Section 8 (3) of the Act, the undersigned will recommend that the respondents cease and desist therefrom and take certain affirmative action which the undersigned finds necessary to effectuate the policies of the Act.

It has been found that respondent Warner, on March 19, 1945, discharged 14 prop makers, members of Local 44 of the Alliance, because of their concerted protest against efforts of the respondent Warner to force them to perform the work of carpenters in the carpenter shop. Attempts of some of the individual prop makers, to return to work during the course of the strike, to perform the jobs held the day of discharge, were unsuccessful. More-

over, it has been found that on or about October 31, 1945, when under the terms of the Cincinnati agreement all workers were returned to work, the prop makers were denied reinstatement because of instructions issued through Pelton on behalf of the Producers Labor Committee and complied with by the respondent Warner.

It has also been found that on March 19, Fuhrmann, speaking on behalf of respondent Warner, advised all the prop makers that for their refusal to take jobs in the carpenter shop they would never again be employed in the motion picture industry. It has been found that thereby the respondent Warner engaged in interference, restraint, and coercion and denied employees rights guaranteed in Section 7 of the Act.

It has been found further, that on October 31, all the complainants named herein, except those previously reinstated, and more particularly those complainants who voluntarily absented themselves during the course of the strike, were denied reinstatement by various of the respondent Producers because the respondent Producers were carrying out the instructions of the Producers Labor Committee. These individuals thus were being discriminated against for having exercised individually and with others a protest against demands to do the work of strikers or take the jobs of individuals who were supporting the strike. It was found above and it is again emphasized that by such conduct on the part of the respondent Producers, the individual

workers were being punished for daring to protest in concerted fashion against the actions of the respondent Producers requiring them to act as strike breakers.

The violations of the Act herein found, particularly the discharges and refusal to reinstate, because of concerted activity, are by ordinary standards sufficiently grave in the undersigned's opinion to warrant the recommendation that the respondents be ordered to cease and desist from in any manner infringing upon the rights guaranteed in Section 7 of the Act.<sup>72</sup> Ordinarily the undersigned would make such recommendation. It appears, however, that the respondent Producers enjoy closed-shop contracts with the Alliance and its locals. The only evidence of independent interference, restraint and coercion is contained in the statement of Fuhrmann, employed by respondent Warner. Because of the peculiar nature of the violation, the undersigned will not recommend that respondent Producers be ordered to cease and desist from in any manner infringing upon the rights guaranteed in Section 7 of the Act.

The undersigned found that respondent Warner discriminated regarding the hire and tenure of employment of the 14 prop makers named in Appendix A attached hereto. The reinstatement with back pay for the individuals named in the Appendix A

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<sup>72</sup>N.L.R.B. v. Express Publishing Company, 312 U. S. 426; May Department Stores Co. v. N.L.R.B., 326 U. S. 376.



will be in accordance with the following recommendations:

The undersigned will recommend that the respondent Warner offer Hand, Gidlund, Lamb, Sapp, Stoica and White immediate and full reinstatement to their former or substantially equivalent positions<sup>73</sup> without prejudice to their seniority or other rights and privileges. The undersigned further recommends that respondent Warner make them whole for any loss of pay they may have suffered by the reason of the respondent's discrimination against them by payment to each of them of a sum of money equal to that which he normally would have earned from the date of discrimination to the date of the offer of reinstatement, less his net earnings<sup>74</sup> during the said period.

Batchelder testified that he made no effort to secure a position in the motion picture industry during the course of the strike. Accordingly, the undersigned will recommend that the respondent Warner offer Batchelder immediate and full reinstatement to his former or substantially equivalent position without prejudice to his seniority or other

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<sup>73</sup>In accordance with the Board's consistent interpretation of the term, the expression "former or substantially equivalent position" is intended to mean "former position wherever possible, but if such position is no longer in existence, then to a substantially equivalent position." See *Matter of The Chase National Bank of the City of New York, San Juan, Puerto Rico Branch*, 65 N.L.R.B. 827.

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<sup>74</sup>*Matter of Crossett Lumber Co.*, 8 N.L.R.B. 440, 497-498.

rights and privileges. The undersigned will further recommend that the respondent Warner make Batchelder whole for any loss of pay he may have suffered by the reason of the respondent's discrimination against him by payment to him of a sum of money equal to that which he normally would have earned from October 31, 1945, the date he was refused reinstatement, to the date of the offer of reinstatement less his net earnings during the said period.<sup>75</sup>

Lora testified that he made no particular effort to secure employment after April 1, 1946. Accordingly it will be recommended that respondent Warner offer Lora immediate and full reinstatement to his former or substantially equivalent position without prejudice to his seniority or other rights and privileges. The undersigned further recommends that respondent Warner make him whole for any loss of pay he may have suffered by reason of the discrimination against him by payment to Lora of a sum of money equal to that which he normally would have earned from the date of the discrimination up to April 1, 1946, less his net earnings during the said period.

Bonning testified that he made no effort to work during the course of the strike. He does not desire reinstatement. The undersigned will recommend that respondent Warner make Bonning whole for any loss of pay he may have suffered by reason of

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<sup>75</sup>The expression "former or substantially equivalent position," when used hereafter is defined in footnote 73, *supra*.

the discrimination against him by payment to him of a sum of money equal to that which he normally would have earned from October 31, 1945, the date of respondent Warner's refusal to reinstate, to May 1, 1946, the date of regular employment elsewhere, less his net earnings during the said period.

MacKellar testified that during the first 3 months of the strike he spent his time working on his home. He was reinstated by respondent Warner about August 1, 1946, and voluntarily quit his employment on September 7, 1946. Accordingly reinstatement will not be recommended for MacKellar. However, the undersigned will recommend that respondent Warner make MacKellar whole for any loss of pay he may have suffered by reason of the respondent's discrimination against him, by payment to him of a sum of money equal to that which he normally would have earned from the date of the discrimination up to August 1, 1946, the date of his reinstatement, less the period of 3 months which MacKellar spent working on his home, and less his net earnings during the said period.

DeSanctis was reinstated by respondent Warner on November 7, 1945. Accordingly, it will be recommended that respondent Warner make him whole for any loss of pay he may have suffered by reason of respondent Warner's discrimination against him, by payment to him of a sum of money equal to that which he normally would have earned, from the date of the discrimination to the date of his reinstatement, less his net earnings during the said period.

Simpson. It appears from the record that due to ill health Simpson was unable to work on and after June 1, 1945, and was unable to resume his employment until about January 1, 1946. The undersigned will recommend that respondent Warner offer Simpson immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority or other rights and privileges. However, the undersigned recommends that respondent Warner make Simpson whole for any loss of pay he may have suffered by reason of the respondent's discrimination against him, by payment to him of a sum of money equal to that which he normally would have earned from the date of the discrimination to June 1, 1945, and from January 1, 1946, thereafter to the date of the offer of reinstatement, less Simpson's net earnings during the two foregoing periods.

Jensen does not desire reinstatement, having found regular employment elsewhere, beginning about February 1, 1946. Accordingly, the undersigned recommends that respondent Warner make Jensen whole for any loss of pay he may have suffered by reason of the respondent's discrimination against him, by payment to him of a sum of money equal to that which he normally would have earned as wages from the date of the discrimination to February 1, 1946, when he found other regular employment, less his net earnings during the foregoing period.

Rogers was reinstated on February 12, 1946, by



respondent Warner. Accordingly, the undersigned recommends respondent Warner make Rogers whole for any loss of pay he may have suffered by reason of the respondent's discrimination against him by payment to him of a sum of money equal to that which he normally would have earned, from the date of the discrimination to the date of his reinstatement, less his net earnings during the foregoing period.

The effect of the expulsion from membership in the Alliance

In making the foregoing recommendations, the undersigned has considered the effect of the stipulation entered into between counsel for the Board and the Alliance that Stoica, Lora, Gidlund, and Lamb were expelled from the Alliance on June 14, 1946, and that Batchelder and Hand were suspended and by reason of non-payment of the fine imposed by the sentence, they likewise stood expelled from membership in the Alliance.

Counsel for the respondents and intervenor urge that by virtue of the closed shop contracts between the respondent Producers and the Alliance and its locals, only members in good standing in the locals can be employed, and expelled members cannot be reinstated by reason of membership disqualification. The unfair labor practices herein found occurred while all of the employees were in good standing in the Alliance. All were entitled to reinstatement on October 31, 1945, at which time they were in good standing, but for the unfair labor practices committed by the respondents. Nothing less than



restoration of the employees' status as it existed prior to the commission of any unfair labor practice, would effectuate the policies of the Act and preserve all the employees' rights, which it is the duty of the Board to protect. "There is nothing in the Act which limits the reinstatement remedy to members of labor organizations or even to striking employees who are primarily and directly aggrieved by an unfair labor practice which causes a strike."<sup>76</sup>

The Act does not preclude the making of a valid closed shop contract. But when limitations of the contract conflict with the paramount obligation placed upon the Board to effectuate the policies of the Act, it is the undersigned's opinion that the rights of the Alliance to full enforcement of a closed shop agreement, must give way to the obligation placed upon the Board to effectuate the law of the land. The paramount obligation of the Board to effectuate the purposes of the Act requires that in doing so these employees be reinstated to the jobs they held prior to the discrimination against them. In the *Star Publishing* case,<sup>77</sup> the respondent urged its inability to comply with a Board order and the Court answered in this language:

Finally, respondent contends that compliance with the Board's order "from a practical stand-

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<sup>76</sup>N.L.R.B. v. Biles-Coleman Lumber Co., 98 F. 2d. 18, 23 (C.C.A. 9).

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<sup>77</sup>N.L.R.B. v. *Star Publishing Co.*, 97 F. 2d. 465, 470 (C.C.A. 9); *N.L.R.B. v. John Englehorn & Sons*, 134 F. 2d. 553, 557, 558 (C.C.A. 3).

point, means exactly the same situation which the respondent faced on the morning of July 2" and that it "would mean a closed plant" because the Drivers will refuse to haul the papers. Assuming that respondent's prophecy is correct, it is no obstacle to the enforcement of the order. By the act Congress has said that certain unfair labor practices cause strikes which have the effect of burdening interstate and foreign commerce. It has acted to protect such commerce, by prohibiting certain practices which it has termed "unfair." It did not choose to protect such commerce from all impediments or strikes, but simply attempted to prevent certain acts which would affect such commerce because such acts lead to strikes. No attempt was made to prevent strikes as such, but only certain acts which might cause strikes. The act of the Drivers in refusing to work, is not one of the acts prohibited. Respondent's contention in the last analysis, is that it is subjected to great hardship, which should also have been dealt with by Congress. We think that such an argument should be submitted to Congress but not to us. Whether or not Congress may deem it wise to enlarge its policy, will be pertinent here, but only when it has done so.

In the Wallace Corporation case,<sup>78</sup> where the

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<sup>78</sup>323 U.S. 248, 256; *Local Lumber Workers Union v. N.L.R.B.*, 158 F. 2d. 365 (C.C.A. 9), 19 LRRM 2098; *N.L.R.B. v. Graham, et al.*, ..... F. 2d. .... (C.A.A. 9), 19 LRRM 2303 (decided February 13, 1947).

validity of a closed shop contract was under attack, the Supreme Court stated:

We do not construe the provision authorizing a closed shop contract as indicating an intention on the part of Congress to authorize a majority of workers and a company, as in the instant case, to penalize minority groups of workers by depriving them of that full freedom of association and self-organization which it was the prime purpose of the Act to protect for all workers. It was as much a deprivation of the rights of these minority employees for the company discriminatorily to discharge them in collaboration with Independent as it would have been had the company done it alone.

For these reasons the undersigned has recommended herein that reinstatement shall prevail without limitation by reason of membership disqualification, caused by expulsions occurring subsequent to the unfair labor practices.

There now remain remedy recommendations appropriate to the cases of the remaining complainants who were not discharged but were refused reinstatement. From the facts found above, these employees ceased work on various dates during the strike, in consequence of, and in connection with, a current labor dispute at the respondent Producers' studios and when they applied for and were refused reinstatement on or about October 31, 1945, they were still employees within the meaning of Section 2 (3) of the Act.<sup>79</sup> It has been heretofore

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<sup>79</sup>*Wilson & Co. v. N.L.R.B.*, 124 F. 2d. 845 (C.C.A. 7).

found that the respondents discriminated regarding the hire and tenure of employment of the employees hereafter mentioned, by refusing to reinstate them, or continuing them in employment on and after October 31, 1945.

The undersigned will accordingly recommend that respondent Warner offer to Goudie, Larson, Seward and Howe, immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges. The undersigned further recommends that respondent Warner make them whole for any loss of pay they may have suffered by reason of respondent Warner's discrimination against them, by payment to each of them of a sum of money equal to that which he normally would have earned as wages from October 31, 1945, to the date of the offer of reinstatement, less his net earnings during the said period.

Coffey refused to cross the picket line at respondent Warner on and after March 12. He was denied reinstatement on October 31. The undersigned passes no judgment on Coffey's alleged addiction to alcohol, commented upon at some length above. It is true that it offered reasonable grounds for dismissal, but, since as heretofore indicated, it was not this reason, but rather Pelton's instructions which motivated the respondent Warner in refusing to reinstate Coffey, it is found that on October 31, Coffey was refused reinstatement because of his concerted activity, and it is recommended that the provisions



of the remedy set forth in the paragraph above apply with equal force to Coffey.

Cuccia testified that after collapse of a private business venture in February, 1946, he made no effort to secure work other than at respondent Columbia. It is recommended that respondent Columbia offer immediate and full reinstatement to Cuccia, to his former or substantially equivalent position without prejudice to his seniority or other rights and privileges. The undersigned further recommends that the respondent Columbia make Cuccia whole for any loss of pay he may have suffered by reason of the respondent Columbia's discrimination against him, by payment to him of a sum of money equal to that which he normally would have earned from October 31, 1945, to February 15, 1946,<sup>80</sup> less his net earnings during the said period.

Stanley does not desire reinstatement. He was, however, refused employment on October 31, and given irregular employment thereafter by respondent Warner and other producers until about November 29, 1945, when for the reasons heretofore stated, his name was stricken from respondent Warner's call list. Accordingly, it will be recommended that respondent Warner make Stanley whole for any loss of pay he may have suffered by reason of the respondent's discrimination against him by payment to him of a sum of money equal to that which

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<sup>80</sup>Approximate date selected as the time when Cuccia dropped his private business venture.



he normally would have earned from October 31, 1945, to on or about November 29, 1945, less his net earnings during the said period.

Hentschel was reinstated by respondent Columbia on October 31, but at the end of the day was placed on call because of compliance with Pelton's instructions. The undersigned will recommend therefore, that the respondent Columbia offer Hentschel immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority or other rights and privileges. This recommendation is made, in order to effectuate the purposes of the Act, although it appears that in June of 1946, Hentschel was expelled from the Alliance. The undersigned further recommends that the respondent make Hentschel whole for any loss of pay he may have suffered by reason of the respondent's discrimination against him by payment to him of a sum of money equal to that which he normally would have earned from November 1, 1945, to the date of the offer of reinstatement, less his net earnings during the said period.

Ames was denied reinstatement on October 31, 1945, by respondent Republic, but was offered employment in January, 1946, which Ames rejected, with the understanding that he would acquaint respondent Republic when he was willing to accept employment. It appears from the record that he has never done so, hence no recommendation will be made respecting his reinstatement by respondent Republic. However, the undersigned does recom-

mend that respondent Republic make Ames whole for any loss of pay he may have suffered by reason of the respondent's discrimination against him, by payment to him of a sum of money equal to that which he normally would have earned from October 31, 1945, to January 15, 1946,<sup>81</sup> less his net earnings during the said period.

Groth was denied reinstatement by respondent Loew on or about November 3, 1945. He does not desire reinstatement, since March 9, 1946, when he found regular employment elsewhere in the motion picture industry. The undersigned does recommend that respondent Loew make Groth whole for any loss of pay he may have suffered by reason of respondent Loew's discrimination against him, by payment to him of a sum of money equal to that which he normally would have earned from November 3, 1945, to March 9, 1946, less his net earnings during the said period.

Selgrath was refused reinstatement as a key grip by respondent Loew on November 1, 1945. Respondent Loew acknowledged Selgrath's application for "employment" but asserts it was refused because of advice that Selgrath was no longer a member in good standing of Local 80; that upon being advised by Local 80 on December 19, 1945, that Selgrath was then in good standing, he was offered employment. The issue of Selgrath's union membership

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<sup>81</sup>This date is chosen as an approximation of the time when he was offered employment by respondent Republic.

involving a question of internal union affairs was not litigated at the hearing. Selgrath did testify that he had always been a member in good standing of Local 80 and had never been advised by anyone connected with the Local that he was not in good standing. Walsh testified that he was advised by Local 80 on October 31, or November 1, that Selgrath was not to be employed because he was no longer in good standing as a member. In addition, Walsh had before him a copy of Pelton's instructions and he acknowledged that these instructions applied to Selgrath. The undersigned is of the opinion and finds that Selgrath was refused reinstatement on November 1, 1945, because respondent Loew complied with Pelton's instructions.

Selgrath was reinstated by respondent Loew as a grip on December 19, 1945, which was not the position he held in March of 1945. Accordingly, it will be recommended that respondent Loew offer Selgrath immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority or other rights and privileges.<sup>82</sup> The undersigned further recommends that respondent Loew make him whole for any loss of pay he may have suffered by reason of respondent's discrimination against him by payment to Selgrath of a sum of money equal to that which he normally would have earned as a key company grip from November 1, 1945, to December 19, 1945, and

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<sup>82</sup>Matter of Western Felt Works, 10 N.L.R.B. 407, 450.

further that he be paid any difference in wages between that which he would have earned as a key company grip on and after December 19, 1945, and that which he earned as a grip after that date, up to the date of the offer of reinstatement to his old job as a key company grip, less his net earnings during the said period.

Mailes was refused reinstatement on October 31, 1945, but reinstated by respondent Twentieth Century on February 15, 1946, and worked thereafter until June 16, 1946, when he was expelled from the Alliance. Because this expulsion took place after respondent Twentieth Century attempted to restore the status quo, so far as Mailes was concerned, no recommendation will be made that Mailes be reinstated to his former job. However, the undersigned does recommend that respondent Twentieth Century make Mailes whole for any loss of pay he may have suffered by reason of the discrimination against him, by payment to him of a sum of money equal to that which he normally would have earned from October 31, 1945, to February 15, 1946, less his net earnings during the said period.

Reinstatement for all of the foregoing employees ordered reinstated shall be effected in the following manner: The undersigned recommends that the respondent Producers be required to displace employees by transfer or otherwise who have succeeded to the former positions of any of these employees. Further, all employees hired on and after March 12, 1945, for the same or substantially equivalent posi-



tions, shall, if necessary to provide employment to the persons to be offered reinstatement, be dismissed. If, even after this is done, there is not by reason of a reduction in force of employees needed, sufficient employment immediately available for the remaining employees, including those to be offered reinstatement, all available positions shall be distributed among remaining employees, in accordance with the respondent Producers' usual method of reducing its forces, without discrimination against any employee because of his union affiliation or activity, following a system of seniority to such extent as has heretofore been applied in the conduct of the respondent Producers' business. Those employees remaining after such distribution, for whom no employment is immediately available, shall be placed upon a preferential list prepared in accordance with the principles set forth in the previous sentence, and shall thereafter, in accordance with such lists, be reemployed in their former or substantially equivalent position as such employment becomes available and before other persons are hired for such work.<sup>83</sup>

On the basis of the above findings of fact and the entire record in the case, the undersigned makes the following:

#### Conclusions of Law

1. International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators

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<sup>83</sup>Matter of Firth Carpet Co., 33 N.L.R.B. 191.



of the United States and Canada, Locals Nos. 44, 80, 727 and 728, affiliated with the American Federation of Labor, are labor organizations within the meaning of Section 2(5) of the Act.

2. By discriminating in regard to the hire and tenure of employment of the employees named in Appendices A and B of this report, thereby discouraging membership in the International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, the respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8(3) of the Act.<sup>84</sup>

3. By interfering with, restraining and coercing its employees in the exercise of the rights guar-

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<sup>84</sup>Respondents urge in their brief that there is a failure of proof that by the discharges and refusals to reinstate, membership in the Alliance was discouraged and that consequently the complaint must be dismissed. Such contention is without merit. While the discouraging effect of discharges may not manifest itself immediately under these circumstances, the possibility that such effect will be demonstrated in the future, is not foreclosed. Indeed, a discharge which is directed against concerted or union activity per se discourages membership in a labor organization involved. As the Court stated in *N.L.R.B. v. John Englehorn & Sons*, 134 F. 2d. 553, 556, 557, (C.C.A. 3),

“All that need be established to show a violation of §8 is conduct by an employer which is defined therein as an unfair labor practice. That section does not require proof that the prescribed conduct had its desired effect.”

anted in Section 7 of the Act, respondent Warner has engaged in and is engaging in unfair labor practices within the meaning of Section 8(1) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

5. Respondent Columbia, respondent Republic, respondent Loew, respondent Twentieth Century, and respondent Association have not violated Section 8(1) of the Act by threatening employees that they would never work again in the motion picture industry.

6. The respondent Producers and the respondent Association have not violated Section 8(1) of the Act, by the payment of bonuses to those employees who passed picket lines or performed the work of strikers during the strike of March 12 to October 31, 1945.

7. The respondent Producers and the respondent Association have not violated Section 8(1) of the Act by interrogating employees with respect to their union membership and affiliation.

8. Respondent RKO has not engaged in unfair labor practices within the meaning of Section 8(1) or (3) of the Act.

### Recommendations

Upon the basis of the above findings of fact and conclusions of law, the undersigned recommends

that respondent Columbia Pictures Corporation, Los Angeles, California; respondent Republic Productions, Inc., Los Angeles, California; respondent Warner Bros. Pictures, Inc., Burbank, California; respondent Loew's, Incorporated, Culver City, California; respondent Twentieth Century-Fox Film Corporation, Los Angeles, California, and respondent Association of Motion Pictures Producers, Inc., Los Angeles, California, their officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in the International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, A. F. of L., any of its affiliated locals or any other labor organization of its employees, by discharging and refusing to reinstate any of their employees, or by discriminating in any other manner with respect to their hire or tenure of employment or any terms or conditions of employment;

(b) Utilizing, applying, or administering the closed-shop provisions of their contracts with the International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, or any of its locals, in such manner as to discharge or otherwise discriminate against any of their employees for exercising their rights under the National Labor Relations Act to engage in concerted protests or activities concerning terms or conditions of their employment;

(c) Engaging in any like or related act or conduct which interferes with, restrains, or coerces their employees in their effort to engage in concerted protests or activities concerning the terms and conditions of their employment.

2. Take the following affirmative action which the undersigned finds will effectuate the policies of the Act:

(a) Respondent Warner will offer to Lynn G. Batchelder, Carl H. Gidlund, George M. Hand, Leo L. Lamb, Raymond M. Lora, Jesse L. Sapp, George Stoica, Jr., William J. Simpson, William G. White, Kenneth B. Coffey, John C. Goudie, Willis F. Howe, Charles J. Larson and Fred Seward immediate and full reinstatement to their former or substantially equivalent positions,<sup>85</sup> without prejudice to their seniority or other rights and privileges.

Respondent Columbia will offer to Joseph P. Cuccia and Irwin P. Hentschel, immediate and full reinstatement to their former or substantially equivalent positions,<sup>86</sup> without prejudice to their seniority and other rights and privileges.

Respondent Loew will offer to John L. Selgrath immediate and full reinstatement to his former or substantially equivalent position<sup>87</sup> without prejudice to his seniority and other rights and privileges.

Reinstatement to their former or substantially equivalent positions in accordance with the fore-

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<sup>85</sup>See footnote 73 supra.

<sup>86</sup>Id.

<sup>87</sup>See footnote 73 supra.

going recommendations, shall be in the manner set forth in the section entitled "The remedy" above, placing those employees for whom employment is not immediately available upon a preferential list, in the manner set forth in said section, and thereafter, in said manner, offer them employment as it becomes available;

(b) Make whole those employees listed in Appendices A and B for any loss of pay they may have suffered by reason of the respondent's discrimination against them in regard to their hire and tenure of employment, in accordance with the recommendations set forth in "The remedy," less their net earnings during the said periods;

(c) Post in conspicuous places throughout the studios of the respondent Columbia, Los Angeles, California; respondent Republic, Los Angeles, California; respondent Warner, Burbank, California; respondent Loew, Culver City, California; respondent Twentieth Century, Los Angeles, California; and in the offices of the respondent Association, Los Angeles, California, copies of the notice attached hereto marked Appendix C. Copies of said notice to be furnished by the Regional Director for the Twenty-first Region, after being signed by the respondents' representatives, shall be posted immediately by the respondents upon receipt thereof and maintained by them for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the respondents



to insure that said notices are not altered, defaced, or covered by any other material;

(d) Notify the Regional Director for the Twenty-first Region in writing, within ten (10) days from the date of the receipt of this Intermediate Report, what steps the respondents have taken to comply herewith.

It is further recommended that unless on or before ten (10) days from the date of the receipt of this Intermediate Report, the respondents notify the Regional Director in writing that they will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the respondents to take the action aforesaid.

It is also recommended that the allegations of the amended consolidated complaint, that the respondents engaged in interference, restraint, and coercion, by the payment of bonuses to employees who passed the picket lines or performed the work of strikers during the strike above described, be dismissed.

It is recommended also that the allegation of the amended consolidated complaint, that the respondents engaged in interference, restraint, and coercion by interrogating employees with respect to their union membership and affiliation be dismissed as against all respondents.

It is recommended that the allegation of the amended consolidated complaints that the respondents engaged in interference, restraint, and coercion by threatening the employees that they would never

work in the motion picture industry again if they refused to perform the work or take the jobs of striking employees be dismissed as against respondent Columbia, respondent Republic, respondent Loew, respondent Twentieth Century, and respondent Association.

It is recommended that the allegations of the amended consolidated complaint that respondent Warner discriminated against H. B. MacDonald be dismissed.

It is finally recommended that the amended consolidated complaint be dismissed as against respondent RKO.

As provided in Section 203.39 of the Rules and Regulations of the National Labor Relations Board, Series 4, effective September 11, 1946, any party or counsel for the Board may, within fifteen (15) days from the date of service of the order transferring the case to the Board, pursuant to Section 203.38 of said Rules and Regulations, file with the Board, Rochambeau Building, Washington 25, D. C., an original and four copies of a statement in writing setting forth such exceptions to the Intermediate Report or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and four copies of a brief in support thereof; and any party or counsel for the Board may, within the same period, file an original and four copies of a brief in support of the Intermediate Report. Immediately upon the filing of such state-

ment of exceptions and/or briefs, the party or counsel for the Board filing the same shall serve a copy thereof upon each of the other parties and shall file a copy with the Regional Director. Proof of service on the other parties of all papers filed with the Board shall be promptly made as required by Section 203.65. As further provided in said Section 203.39, should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board within ten (10) days from the date of service of the order transferring the case to the board.

Dated: March 20, 1947.

/s/ MORTIMER RIEMER,  
Trial Examiner.

### Appendix A

Lynn G. Batchelder	Raymond M. Lora
Robert N. Bonning	Donald MacKellar
Paul DeSanctis	J. Harold Rogers
Carl H. Gidlund	Jesse L. Sapp
George M. Hand	George Stoica, Jr.
Charles Jensen	William J. Simpson
Leo L. Lamb	William G. White

### Appendix B

Robert W. Ames	Willis F. Howe
Kenneth B. Coffey	Charles J. Larson
Joseph P. Cuccia	Eugene V. H. Mailes
John C. Goudie	John L. Selgrath
George I. Groth	Fred Seward
Irwin P. Hentschel	Paul L. Stanley

## Appendix C

Notice to all Employees Pursuant to the Recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We Will Not discourage membership in International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, Locals Nos. 44, 80, 727, and 728, A. F. of L., or any other labor organization of our employees, by discharging or refusing to reinstate any of our employees, or by discriminating in any other manner with respect to their hire or tenure of employment or term or condition of employment.

We Will Not apply, administer, or put into operation the closed shop provisions of our contracts with the International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, Local Nos. 40, 80, 727, and 728, A. F. of L., or of any contract executed in the future, in such manner as to discourage membership in the International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, Locals Nos. 44, 80, 727, and 728, A. F. of L., or any other labor organization of our employees, by discharging or otherwise discriminating against any of our employees for exercising their rights under the National Labor Relations Act to engage

in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

We Will Not engage in any like or related act or conduct which interferes with, restrains, or coerces our employees in their efforts to engage in concerted activities over terms and conditions of employment or other mutual aid or protection during the term of closed shop contracts presently in existence or that may be executed in the future.

We Will Offer to the employees named below, immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to any seniority or other rights and privileges previously enjoyed, and make them whole for any loss of pay suffered as a result of the discrimination against them in accordance with the recommendations of the Intermediate Report.

Lynn G. Batchelder

Leo L. Lamb

Kenneth B. Coffey

Charles J. Larson

Joseph P. Cuccia

Raymond M. Lora

Carl H. Gidlund

Jesse L. Sapp

John C. Goudie

John L. Selgrath

George M. Hand

Fred Seward

Irwin P. Hentschel

William J. Simpson

Willis F. Howe

George Stoica, Jr.

William G. White

\* \* \*

COLUMBIA PICTURES  
CORPORATION,

Employer.

By .....

Representative. Title.

Dated.....



REPUBLIC PRODUCTIONS,  
INC.,

Employer.

By .....

Representative. Title.

Dated.....

WARNER BROS. PICTURES,  
INC.,

Employer.

By .....

Representative. Title.

Dated.....

LOEW'S INCORPORATED,  
Employer.

By .....

Representative. Title.

Dated.....

TWENTIETH CENTURY-FOX  
FILM CORPORATION,

Employer.

By .....

Representative. Title.

Dated.....

ASSOCIATION OF MOTION  
PICTURE PRODUCERS,  
INC.,

Employer.

By .....

Representative. Title.

Dated.....

Note: Any of the Above-Named Employees Presently Serving in the Armed Forces of the United States Will Be Offered Full Reinstatement Upon Application in Accordance With the Selective Service Act After Discharge From the Armed Forces.

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

[Title of Board and Causes.]

Before: Mortimer Riemer,  
Trial Examiner.

Appearances:

ROBERT RISSMAN,

Appearing on behalf of the National Labor  
Relations Board.

O'MELVENY & MYERS, By

HOMER I. MITCHELL,

W. W. ALSUP,

Appearing on Behalf of Columbia Pictures  
Corporation, Republic Productions, Inc.;  
Warner Bros. Pictures, Inc.; Loew's, In-  
corporated; Twentieth Century-Fox Film  
Corporation and Association of Motion  
Picture Producers, Inc.

MICHAEL G. LUDDY,

Appearing on Behalf of International Al-  
liance of Theatrical and Stage Employees  
and Moving Picture Machine Operators  
of the United States and Canada.

## PROCEEDINGS

\* \* \*

Mr. Rissman: If the Examiner please, I desire  
to offer in evidence the formal Board exhibits at

this time, some of which will not be original exhibits in this trial, as I will explain together with the offer.

These will be Board's Exhibits Nos. 1 to 7, inclusive.

(Thereupon, the documents above referred to were marked Board's Exhibits Nos. 1 to 7 for identification.)

Mr. Rissman: As Board's Exhibit No. 1, there is offered copy of the order of the National Labor Relations Board, dated July 18, 1946, consolidating the eight cases which are to be heard now, and one other case which was later severed from these eight. The original certified copy of that order was introduced in evidence in Case No. 21-C-2735.

As Board's Exhibit No. 2, there is offered a copy of the consolidated complaint and consolidated notice of hearing, these documents being dated July 19, 1946, the complaint being signed by Stewart Meacham, regional director for the [19\*] Twenty-first Region. And together with those documents are copies of the various charges upon which the consolidated complaint was issued. The original charges upon which that complaint was issued and upon which the final amended complaint in this proceeding was issued has been introduced in evidence in Case No. 21-C-2735, and appears in that record as Board's Exhibit No. 2 there. The originals normally are made part of the proceeding which is going to hearing. I wonder if counsel for re-

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\* Page numbering appearing at top of page of original Reporter's Transcript.

spondents will stipulate that the copies may be used in this proceeding in lieu of the originals, due to the fact that the originals are in evidence in the other case? If not, I will have to ask leave to withdraw the originals from that case and make them part of the record here.

Mr. Mitchell: Copies of what, Mr. Rissman?

Mr. Rissman: The charges upon which these eight cases are presently going forward, the original documents which were signed by—I think Ben Margolis signed most of them.

Mr. Mitchell: I don't have any objection to your using copies.

Trial Examiner Riemer: So stipulated.

Mr. Rissman: As Board's Exhibit No. 3, there is offered a copy of motion to sever, filed by counsel for the respondents requesting that Case No. 21-C-2735 be severed from the eight cases with which we are proceeding now. That [20] document is dated August 16, 1946, and was filed at the regional office on August 19, 1946. The original motion to sever is likewise an exhibit in proceeding 21-C-2735.

As Board's Exhibit No. 4, there is also offered a copy of an order of the National Labor Relations Board, dated August 30, 1946, severing the cases as requested in the motion which is Board's Exhibit No. 3.

As Board's Exhibit No. 5 there is offered the amended consolidated complaint issued in this proceeding, dated September 3, 1946, and signed by Stewart Meacham, regional director of the Twenty-first Region of the National Labor Relations Board.



Attached to this amended consolidated complaint are the copies of the various charges we have spoken about, and about which Mr. Mitchell stipulates copies may be used instead of the originals.

As Board's Exhibit No. 6, there is offered the original notice of hearing, dated September 4, 1946, setting this matter for hearing on September 16, 1946.

As Board's Exhibit No. 7, there is offered the answer of respondents in this present proceeding, the original having been filed and served on September 16, 1946.

That concludes my offer of exhibits at this time.

Trial Examiner Riemer: Is there any objection, Mr. Mitchell?

Mr. Mitchell: No. Of course, you have omitted the [21] motion to make more definite and certain, or for a bill of particulars, which was filed in response to the original consolidated complaint, and——

Mr. Rissman: You are right. That is an oversight. [22]

\* \* \*

Trial Examiner Riemer: Mr. Luddy, do you have any objection?

Mr. Luddy: No.

Trial Examiner Riemer: The Board's offer is accepted, and the reporter will please mark the offered documents in evidence as Board's Exhibits 1, 2, 3, 4, 5, 6 and 7.

(Thereupon, the documents referred to were marked as Board's Exhibits Nos. 1 to 7, inclusive, and received in evidence.)

Mr. Rissman: Mr. Mitchell, just to keep the record straight, there are no affidavits of service on any of these documents. You acknowledge service for all the respondents named in this proceeding for whom you filed an answer? [24]

Mr. Mitchell: Yes, all of the respondents for whom I filed an answer were served with the amended consolidated complaint, yes. [25]

\* \* \*

### JESSE L. SAPP

a witness called by and on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Rissman:

Q. Will you state your name, please?

A. Jesse L. Sapp.

Q. Where do you live, Mr. Sapp?

A. 448 North Frederick Street, in Burbank.

Q. Were you employed at Warner Bros. at any time? A. Yes, sir.

Q. When did you work there?

A. From 1936 until March 19, 1945. [34]

\* \* \*

Q. (By Mr. Rissman): What was your job while you worked for Warner Bros.?

(Testimony of Jesse L. Sapp.)

A. I was a foreman in the prop shop, subforeman.

Q. What do you mean by the prop shop?

A. That is a shop where they milled all of the props, miniatures, and stuff like that for the making of pictures.

Q. How long were you foreman in the prop shop?

Mr. Mitchell: Now, just a moment. I object to that on the ground it assumes a fact not in evidence. I thought I heard him say he was subforeman.

The Witness: Subforeman.

Mr. Rissman: I am sorry. Subforeman. [35]

The Witness: There was a part of that time when I was a foreman, and a part of it I was subforeman.

Q. (By Mr. Rissman): Well, how long were you foreman?

A. Well, let's see. I would say for a matter of about four years.

Q. From when until when?

A. I had charge of one of the shifts, what was called the night shift, from 6:00 o'clock until 12:00 midnight.

Q. During what period of time were you in charge of that? That is, what years?

A. From 1938 until about 1942, as near as I can state it.

Q. And after 1942 what was your position there?

A. I was a subforeman there then. They changed their system a little bit and had a general foreman, and we all acted under him.

(Testimony of Jesse L. Sapp.)

Q. And who was the general foreman under whom you acted?      A. Mr. Jesse White.

Q. And was there anyone else in charge of the prop shop under whose supervision you worked?

A. Yes, Mr. James Gibbons was superintendent of the prop shop.

Q. How long have you been in the motion picture industry, Mr. Sapp?      A. Since 1928.

Q. And what kind of work have you done since that time? [36]

A. I have been entirely in the prop shop and miniature building.

Q. Will you explain for us what are props, and give us some examples?

A. There has been a lot of controversy over what are props in this jurisdictional stuff sometimes, but my conception of that is that it is all objects on a motion picture set that are movable and are not a part of the set itself.

Q. And what are the miniatures?

A. Miniatures are sets built in miniature, as the name implies. It is built on a small, reduced scale.

\* \* \*

Q. During the time that you were working at Warner Bros., were you a member of any labor organization?

A. I was a member of Local 44, I.A.T.S.E.

Mr. Rissman: May the record show that the International Alliance of Theatrical and Stage Employees and Motion Picture Operators of the United

(Testimony of Jesse L. Sapp.)

States and Canada, affiliated with the American Federation of Labor, is known and may be known in this record as I.A.T.S.E.?

Mr. Luddy: It is all right with me.

Q. (By Mr. Rissman): How long were you a member of Local 44 of the I.A.T.S.E.?

A. Since its formation.

Q. And approximately when was that?

A. I believe that was '39. Previous to that it was Local 37 of the same union, I.A.T.S.E.

Q. How long have you been a member of any local of the [40] I.A.T.S.E.?

A. Since 1936.

Q. Were you ever a member of any other labor organization while working in the studios?

A. I was a member of the United Brotherhood of Carpenters and Joiners in 1928 for a while.

Q. And how long did you remain a member of that union?

A. I would say it was approximately two years. We were building the miniatures under that local at that time.

Q. Well, from approximately 1930 to 1936 were you a member of any labor organization in the studios in the motion picture industry?

A. I got out of the motion picture industry in 1931, and went back in in 1935.

Q. And since you have been back, up until the date of your termination at Warner Bros., March 19, 1945, you were a member of Local 37 and Local 44 of the I.A.T.S.E.?



(Testimony of Jesse L. Sapp.)

A. With the exception of six months. When the I.A.T.S.E. was reformed in the studios was when I joined Local 37.

Q. Since 1936 or 1937 have you ever been employed, or were you employed in the carpenter shop of Warner Bros. as a carpenter?

A. I never was employed in the carpenter shop at any time.

Q. For what employees or what group of employees was Local 44, I.A.T.S.E. the bargaining agent while you were working at [41] Warner Bros. up to March 19, 1945?

Mr. Luddy: Now, just a moment. I object to that, if the Examiner please. It assumes a fact not in evidence. The Trial Examiner can take judicial notice of the rulings of the Board, and I take it for granted he will. The assumed fact is contrary to what the fact is. Local 44 has never been certified as the bargaining agent. The I.A.T.S.E. has been the bargaining agent and so certified by this Board back in 1939.

Trial Examiner Riemer: Sustained.

Q. (By Mr. Rissman): Do you know if Local 44 was bargaining for any particular group of employees at Warner Bros. during the time you were working there?

A. I know that the business agent of Local 44 had told us at various times that he was in on bargaining meetings as far back as New York. Personally, I couldn't say.

(Testimony of Jesse L. Sapp.)

Q. For what employees?

A. Well, that would be for the entire membership of Local 44.

Q. And what employees were members of Local 44, what type of employees?

A. There are several different crafts in that local. There is the prop shop, property men. I don't think I could name them all but there is several of them that is in there.

Mr. Luddy: They are set forth in an exhibit which was [42] in the Machinists' case, if Mr. Rissman wants it, that contract and working conditions that we had in the other case set them all out, 22 different classifications.

The Witness: I think I can give you that exactly, what those are, in just a moment.

Mr. Rissman: It isn't necessary at this time, Mr. Sapp.

The Witness: All right.

Mr. Rissman: We can get another exhibit.

Q. (By Mr. Rissman): Do you know what labor organization represented employees in the carpenter shop at Warner Bros. during the time that you were employed in the prop shop?

A. I believe it was Local 946 of United Brotherhood of Carpenters and Joiners.

Q. Do you know Francis Fuhrmann?

A. I do.

Q. Who is he?

A. He is the superintendent of the crafts building, as they call it, at Warner Bros. That includes

(Testimony of Jesse L. Sapp.)

carpenter shop, tin shop, blacksmiths, painters, and plasterers, I believe. I am not sure whether he is over the scenic artists or not.

Q. Who was the superintendent of the carpenter shop at Warner Bros. during the time you worked in the prop shop?

A. Dick Mills, I believe, had direct charge of this.

Q. And, Mr. Sapp, when I ask any of these questions I am asking you about the period you worked there, and prior to [43] March 19, 1945, unless I specifically say otherwise? A. Yes.

Q. Is that what you have understood up until now in all these questions?

A. That is right.

Q. Do you recall, Mr. Sapp, when the strike occurred in March, 1945?

A. Very distinctly.

Q. Now, the calendar shows that March 12, 1945, was a Monday. Keeping that in mind, can you tell us what kind of work you were doing on March 10, 1945, which would be the Saturday immediately preceding the strike?

A. I was building a piano with a lucite top on it.

Q. Where was that work being done?

A. In the cabinet shop, which is connected with the prop shop of Warner Bros.

Q. Had you completed that job at the close of your work on March 10?

(Testimony of Jesse L. Sapp.)

A. No, it was not completed.

Q. Did you go to work on March 12, 1945?

A. No, I did not.

Q. When was the next time you went to work after March 10, 1945?

A. The morning of March 14.

Q. And where did you work on March 14, and what kind of [44] work did you do that day?

A. It was on that same piano.

Q. That is in the cabinet shop?

A. That is right.

Q. Which is part of the prop shop?

A. That is right.

Q. Did you continue that work all that day on March 14?

A. For the balance of that week we were on it.

Q. Directing your attention to Saturday, March 17, 1945, did you work on that day?

A. Yes, I worked on Saturday.

Q. Did you have any conversation on that day with Mr. Fuhrmann?      A. I did.

Q. Where did the conversation take place?

A. In Mr. Fuhrmann's office.

Q. Who was present at that time?

A. Carl Gidlund, Harold Horner, and myself.

Q. How did you happen to be in Mr. Fuhrmann's office at that time?

A. The boys had heard a rumor that they were going to be asked to do carpenter work, and they

(Testimony of Jesse L. Sapp.)

asked me to go up and meet with "Fuzzy" Fuhrmann and have a talk with him, and ascertain what we were expected to do.

Q. What time of the day was that conversation with Mr. [45] Fuhrmann?

A. I believe it was about 2:00 o'clock in the afternoon, maybe a little before, probably 1:00 o'clock.

Q. And did you see or hear Mr. Fuhrmann at any time before 1:00 or 2:00 o'clock, Saturday, March 17, 1945?

A. I don't recall seeing him that day. I am not sure as to just what time it was when we went up there. It might have been before the lunch hour.

Q. What did Mr. Fuhrmann say to you and the other men who were present? Before you go into that, tell us who they were. You mentioned Carl Gidlund.

A. Carl Gidlund, he was one of the members that was expelled with some of the rest of them from the local.

Q. Was he a prop worker? A. Yes.

Q. What are some of the others?

A. Harold Horner was a prop maker, working as a pattern maker at the time.

Q. Who else?

A. Just the three of us.

Q. Tell us what conversation you and the others had at this time and place.



(Testimony of Jesse L. Sapp.)

A. We told Mr. Fuhrmann we had heard rumors that they were going to ask us to go into the carpenter shop and do carpenter work. Mr. Fuhrmann said, "As far as I am personally concerned, there will be no one asked to go outside of their jurisdiction, and no one will be fired for refusing to go outside of their jurisdiction." We told him that was good enough for us, and we went back to the prop shop and told the boys what he had told us. But I don't think it was an hour later he called me on the phone and told me he might be forced to change that statement and ask us to go into the mill on Monday morning.

Q. What do you mean by "the mill"?

A. That was the carpenter shop.

Q. Is that what you understood him to mean?

A. Oh, yes, definitely.

Q. Is that what the carpenter shop is commonly referred to?

A. Yes.

Q. As the mill?

A. Yes, that is right.

Q. Did you have any further conversation with Mr. Fuhrmann or any other representative of the company on Saturday, March 17, 1945?

A. I did with my immediate superior, Jim Gibbons. He called me back into what he calls his laboratory. He has got a sort of a chemical laboratory back of the office. And he asked me to make a poll of the prop shop and ascertain the desires of the boys and their actions in case they did demand them to go into the prop shop. [47]

(Testimony of Jesse L. Sapp.)

Q. You mean into the carpenter shop?

A. That is right, into the carpenter shop.

Q. What did you say to him?

A. I told him that I would, and I did. I went to every fellow in the prop shop and asked him what he would do in case they were told to go into the mill. Most of them asked me what I would advise them to do. I told them I couldn't advise them, only tell them what I intended to do, and that I didn't intend to. That was about all there was to that that day.

Q. Now, directing your attention to Monday, March 19, 1945, did you go to work on that day?

A. I did.

Q. Where did you go to work?

A. In the prop shop, on the same piano where I had been.

Q. On that day did you have any conversation with Mr. Gibbons or Mr. Fuhrmann, or did they say anything to you?

A. Mr. Fuhrmann came down, I think it was around 10:00 or 10:30, some time about that time, and he called all of the members of the prop shop together and he sat down on what they call a wall plat. It was just an improvised platform. And he faced all the boys and he told them they were going to be expected to go into the mill and do the carpenter work. In fact, he told them if they did not go into the mill and do the carpenter work that they would be eliminated from the [48]

(Testimony of Jesse L. Sapp.)

studios. I asked him at the time myself if he didn't think it was wise to ascertain how many of the boys would go into the carpenter shop. He said he thought it was. So I put the question to them and asked them how many of them wanted to go into the carpenter shop.

Q. You say you put the question to them. You mean the prop makers?

A. I did, to the bunch of boys that was there present.

Q. Approximately how many was that?

A. 38. And I asked them how many of them wanted to go into the mill. Some fellows said, "What the hell do you mean, want to go into the mill?" I said, "We will change it. How many will refuse to go into the mill?" It was unanimous. Every hand went up. I turned to Mr. Fuhrmann and told him, "I think that is your answer, 'Fuzzy'," and he said, "All right, boys. We have got lots of prop work left. Have to it."

Q. Is "Fuzzy" Mr. Fuhrmann's nickname?

A. Yes.

Q. All right.

A. He left, I would judge it was about a half hour. And later, I would say it was around 2:00 o'clock, Mr. Gibbons came around and handed every one of us a blue discharge slip signed by Mr. Fuhrmann that we were discharged for refusing to do carpenter work. And in the meantime, now——[49]

(Testimony of Jesse L. Sapp.)

Q. Just a minute. When Mr. Fuhrmann said to you and the others assembled there if you refused to work in the carpenter shop you would be removed from the studios——

A. Eliminated, I believe was the word he used.

Q. Eliminated from the studios. What did you understand that to mean?

A. I understood that we would just plain be fired if we didn't do it.

\* \* \*

Q. We will get to that. Before this meeting attended by Mr. Fuhrmann, was there any other meeting of the prop men in the department that day, that is, Monday, March 19, 1945?

A. They were called together in the mill.

Q. In the carpenter mill?

A. Yes, in the carpenter shop. They all assembled out there. In fact, I think it was everyone that was working in the crafts building at the time, tinnerns as well as some of the others. They were called together in there, and they were addressed by Mr. Roy Brewer of the International Alliance.

Trial Examiner Riemer: Will you fix the time of this meeting with respect to the one attended by Fuhrmann? [50]

Q. (By Mr. Rissman): Yes. Was this meeting before or after?

A. Yes, this was before, at 9:00 o'clock in the morning was when Brewer came in.

(Testimony of Jesse L. Sapp.)

Q. What time was the meeting you testified about before called by Fuhrmann?

A. I believe it was about 10:30 or 11:00; near that time, anyway.

Q. Was that the same day?

A. Yes, it was.

Q. About an hour and a half or two hours apart?

A. Yes.

Mr. Rissman: And can we stipulate, Mr. Mitchell and Mr. Luddy, that Roy Brewer is International representative of the I.A.T.S.E.?

Mr. Luddy: And was at that time?

Mr. Mitchell: Yes.

Mr. Rissman: Thank you.

Q. (By Mr. Rissman): Who else spoke at that morning session where Mr. Brewer was?

A. I think Mr. Brewer was the principal speaker. I don't remember of anyone else talking.

Q. What did Mr. Brewer say?

A. He told us practically the same thing Mr. Fuhrmann had told us, that we were expected to go into the carpenter shop [51] and do that work, or any other work the studio required us to do, under penalty of being eliminated from the studio.

\* \* \*

Q. Do you know what your seniority status was at the studio in the prop shop?

A. I think Mr. White——

Mr. Mitchell: Now, just a minute. Let him answer yes or not.



(Testimony of Jesse L. Sapp.)

Trial Examiner Riemer: Do you know?

The Witness: Yes, I do.

Q. (By Mr. Rissman): What was it?

A. There was two men that had greater seniority than myself.

Q. Who were they?

A. Mr. Gus White and James B. Peck.

Q. What kind of membership did you have in Local 44, I.A.T.S.E.?

A. The cards were lettered A, B, C and D, I believe, and I had an A card.

Q. And do you know the difference between the A, B, C and D card memberships?

A. It was seniority. The B members dated, I think it was September, 1942, if I remember right, that the B members were dated from after that. Members that were taken in after that — I believe that was the date — were rated as B and C, according to the groups they were taken in.

Q. In addition to the A, B, C and D cards, to your knowledge was there any provision for persons working under [54] special permit in 1944?

A. There was no special provision for it. In fact, I have heard Mr. Walsh say they didn't have permits, but definitely they did at Warner Bros.

Q. When you say Mr. Walsh, to whom do you refer?

A. Mr. Walsh is the International president of the International Alliance.

Q. That is Mr. Richard Walsh?

A. That is right.

(Testimony of Jesse L. Sapp.)

Q. After Mr. Gibbons handed you this blue slip about 2:00 o'clock on March 19, 1945, did you leave the studio?

A. I did. I went home at 2:30. That was the end of the shift.

Q. Did you ever go back to the studios at any time after that to see Mr. Fuhrmann or Mr. Gibbons or any of the other Warner Bros. people?

A. I went in to get my tools about 6:00 o'clock, but in the meantime I had had——

Q. On the same day?

A. Yes. I had had a conversation with them both on the telephone.

Q. With whom did you have the conversation first?

A. What is that?

Q. With whom did you have the first telephone conversation?

A. Mr. Gibbons. [55]

Q. When was it?

A. Mr. Gibbons called me, I would say it was around 4:30 or 5:00 o'clock, and told me they were going to have a meeting of all of the prop shop boys at Mr. Fuhrmann's office at 6:00 o'clock, and asked me to come down. I told him I would.

Q. Were you there?

A. I was not. Mr. Fuhrmann called me a few minutes later and told me I wasn't wanted at that meeting; I was excluded from that meeting.

Q. Gibbons invited you and Fuhrmann told you not to come?

A. That is right.

Q. So you didn't go?

A. That is right.

Q. Did you go back to get your tools that day?

(Testimony of Jesse L. Sapp.)

A. At 6:00 o'clock I went in and picked up my tools.

Q. Did you talk with Gibbons or Fuhrmann at that time?

A. No. I believe the meeting was in progress in Mr. Fuhrmann's office, and I didn't go near it.

Q. I see.

A. I just picked up my tools and went on home.

Q. Did you ever have any conversation with Fuhrmann or Gibbons after that day, March 19, 1945?

A. Yes, I called Mr. Fuhrmann and asked him if we could go back to work after the strike was settled. [56]

Q. You called him after the strike was settled?

A. Yes.

Q. Approximately how long afterwards?

A. I think it was around the 6th of November.

Q. 1945? A. 1945.

Q. What conversation did you have with him?

A. I can't recall the entire conversation, but——

Q. The substance of it?

A. Well, he just told me that there wasn't a job for me there at that time, in fact, there was no job for any of us fellows that stayed out. [57]

\* \* \*

Q. Mr. Sapp, did you have any reason for not wanting to go to work in the carpenter shop?

A. Distinctly I did.

Q. What was the reason?

(Testimony of Jesse L. Sapp.)

A. Well, in the first place, my conscience wouldn't allow me to be a scab; and in the second place, it was in direct violation of the oath I took when I joined the International Alliance, Local 44.

Q. To what oath do you refer?

A. There is an obligation in the front pages of the by-laws which refers to the constitution of the American Federation of Labor, and in that oath it states that — I think it says, "I further affirm——" I have it right here — in the middle of it, it says, "I further affirm I will observe the mandate of the American Federation of Labor——"

Mr. Mitchell: Just a moment. May we find out what he is reading from?

The Witness: The by-laws of Lodge 44.

Trial Examiner Riemer: The witness holds in his hands the constitution and by-laws of Affiliated Property Craftsmen, Local No. 44, of the International Association of Theatrical and Stage Employees and Moving Picture Operators of the United States and Canada, first edition. He is reading from page 2.

Q. (By Mr. Rissman): Perhaps you had better start reading it again.

A. Should I read the whole thing, or just a portion?

Q. Read the part you are referring to in your answer.

A. "I further affirm I will observe the mandates

(Testimony of Jesse L. Sapp.)

of the American Federation of Labor so long as the International Alliance be a part of that organization." The thing that I referred to in the American Federation of Labor, I couldn't repeat that word for word, and I haven't got one with me, but [60] it distinctly says before a member is allowed to work in the jurisdiction of a sister local he must have the consent of that local.

Q. Now, on March 19, 1945, were the carpenters working in the carpenter shop at Warner Bros.?

A. What date was that?

Q. The date of your discharge, March 19.

A. No, they were not.

Q. And do you know, or did you know at that time, why they were not working?

A. They were on a picket line out in front.

Q. Did you ever refuse at any time to do any work which you were assigned in the prop shop, or in connection with prop making during the time you were employed by Warner Bros.?

A. I never did.

Q. Prior to March 19, 1945, were you ever requested to do any work other than prop making?

A. No, sir, I never was. [61]

\* \* \*

### Cross-Examination

By Mr. Mitchell:

Q. Mr. Sapp, in the early part of March of 1945 you were a member of Local 44 of the I. A. T. S. E.?

A. I was.



(Testimony of Jesse L. Sapp.)

Q. And you were working at Warner Bros.?

A. That's right.

Q. I will show you Respondents' Exhibit 2. Will you tell [74] me in which job classification you were working?

A. As a gang boss. However, it was sub-foreman until I think this book came out and it was changed to gang boss, just the title.

Q. In this document, having become effective according to its terms as of January 1, 1944 — you were working in March, 1945, pursuant to this contract, weren't you? A. That's right.

Q. And you were working in the classification known as T-2, is that it?

A. I believe that's it,—prop——

Q. Which is prop and miniature gang boss?

A. That's right.

Q. At \$2.05 an hour? A. That's right.

Q. That was your job? A. That's right.

\* \* \*

Q. Do you recall the first meeting that you had either with I.A.T.S.E. representative or with Warner Bros. representatives with respect to the question of crossing jurisdictional lines, or working at carpenter work?

A. Well, crossing the lines was on the second day of the strike. Mr. DuVal and Mr. Brewer, in front of the studio in the middle of the street.

Q. That was the first discussion by any I. A. T. S. E. representatives that you remember, was

(Testimony of Jesse L. Sapp.)

a discussion across the street from the studio?

A. It definitely was.

Mr. Rissman: Mr. Mitchell, may we have for this record an identification of Mr. DuVal. I think this is the first time his name has been mentioned.

Mr. Mitchell: He is business agent of Local 44.

Q. (By Mr. Mitchell): Is that right?

A. That's right.

Q. "Cappy" DuVal?

A. That is correct. [77]

Q. And Mr. Roy Brewer is the international representative of the I.A.T.S.E.?

A. That is correct.

Q. Was this conversation in a picket line?

A. No, sir, it was across the street from the picket line.

Q. Across the street from the picket line. And without naming all the people there, were the Warner Bros. prop men in general there?

A. I would say practically the whole personnel of the studio was out there that morning.

Q. The prop men, most of them?

A. Most all of the prop men.

Q. Most of the grips? A. Grips.

Q. A grip is a classification that does stage hand work, is that right?

A. That's right, Local 80.

Q. And most all of the lamp operators were there?

A. I couldn't say whether all of them were out

(Testimony of Jesse L. Sapp.)

there but a large bunch of them were out there.

Q. All right, who spoke first, Mr. Brewer or Mr. DuVal?      A. I think Mr. DuVal did.

Q. What did he say?

A. He told us that he had a telegram from Mr. Walsh telling us to cross the picket line. [78]

Q. Did he read it to you      A. He did.

Mr. Mitchell: I will ask that this document be marked Respondents' Exhibit 3 for identification. I have additional copies in my office which I will furnish this afternoon.

(Thereupon, the document referred to was marked as Respondents' Exhibit No. 3, for identification.)

Q. (By Mr. Mitchell): I will show you a document marked Respondents' Exhibit No. 3 and referring particularly there to a copy of a telegram dated March 12, 1945, from Mr. Walsh — Richard Walsh — to Mr. DuVal, read it and tell me whether that was the telegram that was read to you on the day in question.      A. That's right, it is.

Q. And later on did you see this entire document marked Respondents' Exhibit 3?

A. I received a copy of it through the mail when I went home that evening, the second day of the strike.

Q. A copy of the entire document?

A. That's right.

Mr. Mitchell: I will offer it in evidence.

Mr. Rissman: I have no objection to it on the

(Testimony of Jesse L. Sapp.)

basis of identification. I do object to its materiality, if the examiner please.

Mr. Mitchell: I claim it is a part of proper cross-examination. He has gone into the questions. Let's finish [79] them.

Trial Examiner Riemer: The objection is overruled. It may be admitted and marked in evidence as Respondents' Exhibit 3.

(Thereupon, the document heretofore marked as Respondents' Exhibit No. 3, for identification, was received in evidence.)

Q. (By Mr. Mitchell): Who read the wire to you from Mr. Walsh? A. Mr. DuVal. [80]

\* \* \*

Q. All right. When was the next conversation when anything was said about crossing jurisdiction or doing carpenter work?

A. The following Sunday Mr. Walsh made that statement at a meeting, during a meeting he called.

Q. Let's see. What date would that be then?

A. I believe that was the 18th.

Mr. Rissman: March 18?

Mr. Mitchell: March 18? [85]

The Witness: 18, I believe.

Mr. Rissman: 1945.

Q. (By Mr. Mitchell): Where was this meeting held?

A. At a place known as the Women's Club on Hollywood Boulevard.

(Testimony of Jesse L. Sapp.)

Q. What was it a meeting of,—I mean, what people?

A. Of the International Alliance group. I think, though, it was mostly 44, Local 44 that was called.

Q. Including others than Warner Bros.?

A. Oh yes, various studios.

Q. And you say Richard Walsh was there?

A. He was.

Q. And what did Mr. Richard Walsh say with respect to crossing jurisdictional lines or doing carpenter work?

A. He said he had made an agreement with the studios to keep the studios running, and that we were not to observe jurisdictional lines, that we were to do any work asked of us to be done, any work the Producers asked us to do. [86]

\* \* \*

Q. All right. When was the next occasion on which any officials of the I.A.T.S.E. or any representatives of Warner Bros. made any statement with respect to crossing jurisdictional lines or doing carpenter work?

A. The following Tuesday night, at the regular meeting of Local 44.

Q. Where was that held?

A. That was in the regular hall, on Santa Monica Boulevard. I just don't recall the number.

Trial Examiner Riemer: That would be Tuesday, March 20?

The Witness: I believe that would be it.



(Testimony of Jesse L. Sapp.)

Mr. Rissman: The day after your discharge?

The Witness: That is right.

Q. (By Mr. Mitchell): Well, before we get to March 20, wasn't there some conversation on March 19? A. Oh, yes, definitely.

Q. Well, let us go from this occasion when Mr. Walsh [87] addressed you at the Women's Club on March 18. A. That is right.

Q. Let us move now to March 19, and you tell me what the first conversation was, or with whom the first conversation was had, or the first statements were made by any company representative or by any I.A.T.S.E. or Local 44 representative, with respect to crossing jurisdictional lines or doing carpenter work.

A. It was by Mr. Roy Brewer. It was definitely a statement, not a conversation.

Q. I see. And where was that statement made?

A. In the main office of the carpenter shop of the mill at Warner Bros.

Q. And who was present, in general, at that meeting?

A. I believe Mr. DuVal was there, Mr. Brewer, and a couple of other gentlemen that I don't remember who they were, were with them at that party. And all of the I.A.T.S.E. members that were working in the crafts building at that time were there.

Q. All right. Now, state what Mr. Brewer said at that time.

(Testimony of Jesse L. Sapp.)

A. I couldn't commence to repeat all he said, but the substance of it was that we was to cross jurisdictional lines and do any work they requested us to do, or we would never work in the studios again. [88]

Q. And when you say "do any work they requested us to do" did he say what the studio requested you to do?

A. He implied at least that the studio officials, or foremen there, whoever it might be.

Q. He told you you were to follow the directions of the studio officials or your direct foreman and to do whatever work they assigned you to do?

A. That is right.

Q. All right. Was anything else said at that meeting in the mill?

A. That is about all I recall. That was the main gist of the whole talk. There was nothing else that was said that I remember of particularly.

Q. In making props, did you ever enter the mill to use woodworking machinery?

A. Oh, yes. Personally, I didn't; I was directing the work, but the boys under me did.

Q. That was a regular thing, to use the woodworking machinery in the mill, wasn't it?

A. Well, whenever they wanted a large enough piece they couldn't panel with their own machinery, they had their own machinery in the prop shop as well.

Q. I see. Now when was the next statement

(Testimony of Jesse L. Sapp.)

or conversation with respect to crossing jurisdictional lines or doing carpenter work, such statement having been made either by a [89] representative of the I.A.T.S.E. or of Warner Bros.

A. About 10:30 or 11:00 the same day by Mr. Francis Fuhrmann.

Q. And where was that statement made by Mr. Fuhrmann?

A. That was in the prop shop itself.

Q. And were the members of Local 44 doing prop work present at that conversation?

A. That's right. There were 38 prop makers there.

Q. Was any representative of the I.A.T.S.E. there?

A. No, there was not.

Q. Neither Mr. DuVal nor Mr. Brewer?

A. No.

Q. What did Mr. Fuhrmann say?

A. He told us the strike was on, the carpenters were out and they had to keep the studios running and we were expected to go into the carpenter shop and take over and do the carpenter work, to build sets. He said, "Sets is what we need now and sets we are going to have and we expect you boys to go in there and build these sets."

Q. All right, did anybody say anything with respect to that?

A. I asked him if he didn't think it would be wise to ascertain the desires of the boys as to their willingness, as to whether they would or would not

(Testimony of Jesse L. Sapp.)

go into the mill. He said it would. So I turned to the boys myself and asked them how many wanted to go into the mill. [90]

Some fellow made the remark, "What the hell do you mean, want to?" I said, "All right, I'll rephrase it, then. How many will refuse to go into the mill?" And every man held his hand up. I turned to Mr. Fuhrmann and I said, "Well, Fuzzy, I think that's your answer." He said, "All right, boys, we still got plenty of prop work to do, so let's have at it," and he got up and walked out.

Q. All right. When was the next occasion when this same subject was discussed?

A. The only discussion with any official then after that of the studio was with Mr. Gibbons at a meeting we had at Jim Peck's house. That's the only conversation we had about it except out in the street, I believe, the following morning.

Q. Let's get the occasion of the next discussion either with a studio representative or with an I. A. T. S. E. representative.

A. I am speaking about me personally.

Q. Just that you know about, yes.

A. Well, there was a meeting called in Mr. Fuhrmann's office that same evening that we were fired. It was called in his office and I was excluded from that meeting.

Q. So you don't know about that of your own knowledge? A. No.

Q. When was the next meeting that you know

(Testimony of Jesse L. Sapp.)

anything about of your own knowledge, or the next discussion? [91]

A. When anyone connected with the studios was present it was with Mr. Gibbons out at Jim Peck's house.

Q. Mr. Gibbons' occupies what position at the studio?

A. Superintendent of the prop shop.

Q. He is also a member of Local 44 of the I. A. T. S. E.?

A. I believe he is.

Q. You know he is, don't you?

A. Oh, yes.

Q. Or was then?

A. Yes, I know he was. However, I had conversations with Gibbons myself the day of the strike. That wasn't at that meeting — the day we were fired, rather.

Q. Well, the last conversation that you related was the one at which Mr. Fuhrmann instructed the prop makers to do carpentry work and you called for a vote or something and then he walked out of the room?

A. That's right. [92]

\* \* \*

A. I don't remember whether it was that afternoon or the following — the boys was called back, I believe it was the same afternoon, they called the boys back into the studio. They had a meeting over the cabinet shop where we discussed the whole matter and took a vote as to what we wanted to do and again voted unanimously to stay out.



(Testimony of Jesse L. Sapp.)

Q. Were you there? A. I was.

Q. What happened that afternoon of March 19th?

A. After that I think Mr. Fuhrmann called the meeting in his office from which I was excluded.

Q. Well, before that time did anybody request you to leave the studio?

A. No, they did not.

Q. Did they tell you your services were terminated? A. Oh, yes, definitely.

Q. Well, who said that to you?

A. Mr. Fuhrmann, when he gave me this blue slip signed by Mr. Fuhrmann.

Q. And what time of day was that? [93]

A. I'll take that back now, it wasn't Mr. Fuhrmann that handed me this. It was Mr. Gibbons that handed me this.

Q. What time of day was that?

A. 2:00 o'clock, just before we left the shift.

Q. Did he have any conversation with you at the time he handed this notice to you?

A. I don't recall just what was said when he handed it to us.

Mr. Mitchell: I'd like to have this document marked for identification.

Trial Examiner Riemer: Respondent's Exhibit 4.

(Thereupon the document above referred to was marked Respondent's Exhibit No. 4 for identification.) [94]

(Testimony of Jesse L. Sapp.)

Trial Examiner Riemer: It may be admitted and marked in evidence as Respondent's Exhibit 4.

(The document heretofore marked Respondent's Exhibit 4 for identification was received in evidence.)

Q. (By Mr. Mitchell): Did you have any conversation with anybody later about withdrawing that off-payroll notice and coming back to work?

A. No, I did not, definitely.

Q. Did you have any conversation with any employee committee about the withdrawal of that off-payroll notice if you would come back to work?

A. No, no conversation. I have never been offered the opportunity to come back at any time since I was handed that slip under any circumstances. I might state, too, I was also refused a clearance slip. At that time you had to have an availability certificate and I was refused one and didn't have one during the whole strike and haven't received one as yet.

Q. All right then, after receiving that notice, marked Respondent's Exhibit No. 4, did you leave the studio? [95]

A. I left, yes, sir, at 2:00—at 2:30 o'clock I was out of the studio.

Q. Then was this conversation at somebody's home the next one you had with anybody connected with the I.A.T.S.E. or the studio?

A. Well, the next thing that happened was—we

(Testimony of Jesse L. Sapp.)

went back to the studio at 4:00 o'clock for this meeting.

Q. You didn't attend that meeting. What happened after that?

A. The 6:00 o'clock meeting is the one I didn't attend.

Q. You went to the 4:00 o'clock meeting?

A. Yes, among the boys themselves. Gibbons or no officials was there at all.

Q. After that meeting amongst the boys themselves, there was a meeting at 6:00 o'clock to which you weren't invited?

A. I was invited not to attend.

Q. Then what was the next meeting that you know anything about personally. Is that the one at somebody's house that Mr. Gibbons attended?

A. No, at Carpenters Hall the following day, the second day after we were fired the boys met at the Carpenters Hall amongst themselves.

Q. At the Carpenters Hall?

A. At Carpenters Hall, the only place available, and they met at Carpenters Hall. [96]

Q. The carpenters were the men that weren't working?

A. That's right, and they offered us the use of their hall if we wanted it, and we accepted.

Q. Was that meeting addressed by any representative of the I.A.T.S.E. or the studio?

A. It was not.

Q. All right, when was the next meeting when

(Testimony of Jesse L. Sapp.)

any member of the I.A.T.S.E. or representative of the I.A.T.S.E. or any representative of the studio had anything to say?

A. At Mr. Peck's house. I think Mr. Gibbons was there. He was our superintendent there and it was the first meeting, by the way, that he had attended. He contended before that he had no right to attend our meetings.

Q. That was a little meeting of the group, was it, at Mr. Peck's house?

A. That's right, it was, most of them.

Q. Well, did Mr. Gibbons represent that he was attending there as a studio representative?

Mr. Rissman: I object.

Trial Examiner Riemer: Overruled.

The Witness: No. He didn't represent that he was a representative of the studio, but he was—as a foreman, yes, and he decidedly urged the boys to go back in at that time. He reversed himself.

Q. (By Mr. Mitchell): He urged the boys to go back to work? [97] A. Yes.

Q. And to do carpenter work as instructed?

A. Oh, yes.

Q. All right. Did you have any more meetings with studio representatives or I.A.T.S.E. representatives after that?

A. No, I did not. Any more than telephone conversations it all I have ever had with any of them since then.

Q. Well, on March 19th did you tell Mr. Fuhrmann that you would not do carpentry work?

(Testimony of Jesse L. Sapp.)

A. No, we just simply took that vote that I told you about when the whole bunch was in the prop shop and they voted unanimously to refuse to go in. I didn't vote myself because I put the question to them. However, if I had have voted it would have been right with the boys.

Q. You were unwilling to do carpentry work, weren't you?      A. That's right.

Q. Even though the studio representatives requested you to do so?      A. Definitely.

Q. And you continued unwilling to do carpentry work at any time during that strike, didn't you?

A. That's right.

Trial Examiner Riemer: Gentlemen, I will declare a five-minute recess. [98]

\* \* \*

Trial Examiner Riemer: The hearing will be in order. Gentlemen, will it be satisfactory if the reporter reads the stipulation now that was dictated during the off-the-record discussion?

Mr. Mitchell: Yes.

Mr. Luddy: Yes.

Trial Examiner Riemer: Will you read that back, Mr. Reporter?

The Reporter: "Mr. Mitchell: I offer to stipulate that under sentence dated the 31st day of May, 1946, and served upon the 14th day of June, 1946, the following persons were expelled from the I.A.T.S.E.: Robert W. Ames, Carl H. Gidlund, Erwin P. Hentschel, Leo L. Lamb, Raymond M.



(Testimony of Jesse L. Sapp.)

Lora, Eugene V. H. Mailes, Jesse L. Sapp, George J. Stoica, Jr.; and that the following persons were suspended for a period of six months starting June 17th, 1946: Lynn G. Batchelder and George M. Hand; and that on June 14, 1946, respondents were advised by the I.A.T.S.E. of such suspensions and expulsions."

Trial Examiner Riemer: Is that stipulation satisfactory?

Mr. Rissman: Yes, I will so stipulate.

Mr. Luddy: So stipulated.

Mr. Mitchell: So stipulated. [112]

\* \* \*

Q. (By Mr. Mitchell): In the practice of Local 44, did your men out of employment have a practice of registering with the local?

A. Why, I understand they have a call book, yes. [121]

Q. That is what you call a call book?

A. Yes, that is right, that they sign.

Q. Did you sign the Local 44 call book?

A. I did it one time, yes.

Q. When?

A. I will have to refer to my note again. I think I have that. 10:10 a.m., November 9, I signed the call book. [122]

\* \* \*

WILLIAM G. WHITE

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Rissman:

Q. Will you state your full name?

A. William G. White.

Q. Mr. White, were you employed at Warner Bros.?

A. Yes, I was.

Q. Are you also known among the men there as Gus White?

A. Yes, sir; I am.

Q. How long were you employed at Warner Bros.?

A. About nine and one-half years.

Q. Up until when?

A. Until the 19th day of March, 1945.

Q. And what was your last occupation at Warner Bros.?

[123]

A. I was foreman in charge of the prop shop on the morning shift.

[124]

\* \* \*

Q. (By Mr. Rissman): At the time of the termination of your employment on March 19, 1945, were you a member of any labor [125] organization?

A. I was.

Q. Which one?

A. Local 44, I.A.T.S.E.

Q. And how long had you been a member of that local?

(Testimony of William G. White.)

A. Since the beginning of the local. It was taken over from 37 and changed to 44.

Q. How long were you a member of Local 37, I.A.T.S.E.?      A. Since January, 1936.

Q. And was January, 1936, the first time you became a member of any local of the I.A.T.S.E.?

A. Yes.

\* \* \*

Q. (By Mr. Rissman): Directing your attention to March 12, 1945, did you work on that day?

A. Monday, March 12? No, I did not. [126]

Q. Was there any reason why you didn't go to work on that day?

A. There was a picket line in front of the studio, and that day I did not go through the picket line.

Q. To what work did you return on March 14, 1945?

A. To my regular work as foreman of the prop shop.

Q. How long did you continue to do your regular work in the prop shop after returning to work on March 14, 1945?

A. Until 2:30 p.m. on the afternoon of March 19.

Q. Where is the prop shop located on the Warner Bros. lot?

A. They have a crafts building which—our prop shop is located about midway of the crafts building, the carpenter shop on one side and the plastic shop on the other side. We had two shops. There was one at this location, and then there was a plastic

(Testimony of William G. White.)

shop and a plumbing shop, like between one shop and the other shop, what we called the cabinet shop. That is where we done all the cabinet work and furniture repairs and pattern making, and stuff like that.

Q. Now, this cabinet shop is considered part of the prop making department, is it? A. Yes.

Q. In which shop of the prop making department did you work? A. Both places.

Q. And where is the carpenter shop or mill with relation to the prop making shop? [127]

A. It adjoins the prop making shop, just a wall between the two.

Q. During the time that you were employed at Warner Bros., were you ever engaged in the setting up of props? A. Setting up of props?

Q. Yes. A. Yes.

Q. And in the making of props?

A. Yes, that is right.

Q. Did you ever engage in the operating of props? A. Yes.

Q. And the striking of props?

A. Yes, that is right.

Q. Will you tell us what each one of those functions or jobs is, starting first with the making?

A. The making of props—well, a prop consists of anything that is used in the inside of a set, or in a movable prop or any operating prop or any miniature or any process body. We built all those in our shop.

(Testimony of William G. White.)

Q. Regardless of the type of material used?

A. That is right.

Q. What is the setting up of props?

A. Well, if it is to be in on the stage where it was to be shot, or out on the lot, out on the location, we would build it in the shop so that it could be moved and set up in operating [128] position on the location, on the stage, wherever that is. That is what we call the setting up of the prop.

Q. By whom is the setting up of props usually done?

A. By the prop shop, the prop makers.

Q. Will you describe what is meant by the operating of props, and give us some examples of that type of thing?

A. The operating of a prop is any prop that is movable, like breakaways, the operating of a process body, or a train, a miniature train, or any prop that has anything moving on it that has to be operated.

Q. You have used the term "process bodies" a couple of times. What do you mean by that?

A. Process bodies would be bodies of airplanes or anything that is used in front of the screen in a projection job.

Q. What is meant by the term "striking props"?

A. When a prop has been shot and we have orders to strike that prop and store it away for future use, we would go in and disassemble it.

Q. Is the striking the disassembling?

A. Yes.



(Testimony of William G. White.)

Q. And storing away?

A. And storing away.

Q. During the time that you were employed by Warner Bros., did you ever work under the supervision of any one other than Mr. Gibbons? [129]

A. No.

Q. Were you ever employed as an employee of the carpenter shop? A. No.

Q. Directing your attention to March 19, 1945, did you work on that day? A. Yes.

Q. And what kind of work did you do then?

A. My regular work is foreman of the prop shop.

Q. And on what shift was that?

A. The morning shift.

Q. Was that the shift that ended at 2:00 p.m.?

A. 2:30 I believe at that time. We were going to work at 7:00 o'clock.

Q. Did you have any conversation or hear any statement on that day by Mr. Fuhrmann?

A. I did. I talked to Mr. Fuhrmann just after we had been ordered into the carpenter shop.

Q. By whom?

A. By Mr. Fuhrmann to hear Mr. Brewer to make his statement.

Q. Now you say you were ordered to the carpenter shop by Mr. Fuhrmann. Tell us what he said and where it was and to whom he said it; that is, Mr. Fuhrmann.

A. Mr. Fuhrmann, he came in and told me to

(Testimony of William G. White.)

gather my whole [130] crew and tell them to come into the carpenter shop. That was, I think, about 10:30—10:00 or 10:30, something like that.

Q. Did he tell you why he wanted them to come into the carpenter shop? A. No.

Q. Did you get your crew into the carpenter shop? A. I did.

Q. Approximately how many men were there in your crew about that time?

A. Around 38 or 40, I think about 38.

Q. And when you got into the carpenter shop who was there?

A. Just a few minutes after we all got in there, Mr. Brewer and Cappy DuVal and Mr. Fuhrmann came through the front door.

Q. What happened then?

A. And Mr. Brewer made a talk and told us Mr. Walsh had told the studios he would keep the studios running during that trouble and that we was to do anything that the Producers asked us to do.

Q. Was Mr. Fuhrmann present during this talk by Mr. Brewer? A. He was.

Q. Was anything else said by anyone at that time and place?

A. I'm not sure about that. It seems to me that Mr. DuVal did say a few words, but I don't remember for sure. [131]

Q. Now you say you had a conversation with Mr. Fuhrmann shortly after he ordered you to bring your men into the carpenter shop? Tell us about that.

(Testimony of William G. White.)

A. After Mr. Brewer made his talk, Mr. Fuhrmann came over to me and asked me how the boys felt about it and I told him that the way I understood they felt from what I had heard, that they would not go in the carpenter shop as carpenters. He says, "Will they take their blue slips in preference to going in as carpenters?" I says, "I think that's the way you will find it." He says, "That's the way it will be."

Q. What did you understand him to mean by taking their blue slips? [132]

\* \* \*

The Witness: I understood him to mean that they would take their blue ships as a discharge slip, which it was, and everybody understood that. A blue slip at Warner Bros. was a discharge slip.

Q. (By Mr. Rissman): You say everybody understood that. Will you explain how that was understood, how you understood it?

A. The reason I understood it was from hearing the boys talk and from them talking to me and me talking to them.

Q. Now during the time that you were a foreman or assistant foreman, whatever your job was out there, had there ever been any men in the prop making department laid off because of lack of work?

A. Plenty of times.

Q. And how are employees notified of any such layoff because of lack of work?

A. Because of lack of work in the afternoons be-

(Testimony of William G. White.)

fore the quitting hour I would tell each gang boss about how many men that we thought that we could use the next day and those men we did not have work for were notified that they were off, on call.

Q. How would they be notified that they would be off, on call?

A. Through the foreman they were working under or through [133] myself.

Q. That is, they would be notified verbally?

A. Verbally.

Q. And did you or anyone under your supervision ever have occasion to hand any employee a blue slip?

A. I have.

Q. And what occasions did you hand employees blue slips?

A. It was on occasions where an employee was, we figured was not competent to do the work or could not do the work or would not do the work and he was discharged for a reason.

Q. Is there any other kind of notification when an employee is discharged for a reason?

A. No.

Q. And when you were referring to blue slips, you were referring to one similar to Respondent's Exhibit 4 which I now hand you?

A. That's right.

Q. By whom are these blue slips normally signed?

A. Mr. Fuzzy Fuhrmann.

Q. Did you get a blue slip on March 19th?

A. I did.

(Testimony of William G. White.)

Q. Do you have it with you? A. Yes, sir.

Mr. Rissman: Mr. Mitchell, can we stipulate that the blue slip handed to Mr. White is identical with Respondent's [134] Exhibit 4 except for the difference in name and number of employee and his rate of pay?

Mr. Mitchell: And his occupation.

Mr. Rissman: And occupation; that the reason or remarks: "Refused to do carpenter work" is the same?

Mr. Mitchell: Yes, that's right. I will so stipulate. [135]

\* \* \*

Q. How did you happen to be meeting on the Warner Bros. lot on that day, Wednesday, March 21st, 1945?

A. About 9:00 o'clock of that morning Mr. Fuhrmann called me and asked me if I would come to his office.

Q. Called you at your home?

A. At my home.

Q. What did you tell him?

A. I asked him if any other boys would be there. He says, "Yes, Carl Gidlund and Harold Horner."

Q. Who is Harold Horner?

A. Harold Horner was a pattern maker in our cabinet shop. I went in about 9:30 and Mr. Fuhrmann asked us if——

Q. Were Horner and Gidlund with you?



(Testimony of William G. White.)

A. Yes.

Q. All right, tell us what was said.

A. He asked me if there had been any change in the way the boys felt and I told him that there had not been. He asked me, would I call a meeting in the studio lot that afternoon and ask them to go over it again, and I told him I would. I got on his telephone and called I think all of the men that was out.

Q. And approximately how many came to that meeting that afternoon?

A. I think they were all there—about 38. [142]

Q. Where was the meeting held?

A. Over the cabinet shop. We have a galley up there, a mezzanine floor. It was up there.

Q. Who was present in addition to the prop making department employees?

A. No one at that meeting.

Q. Was Mr. Fuhrmann present?

A. No, sir.

Q. What occurred at that meeting?

A. Everything was talked over and they decided they would still not go back as carpenters.

Q. Did they have any further conversation with Mr. Fuhrmann after that meeting?

A. Called Mr. Fuhrmann and told him that the boys refused to go in as carpenters, but was perfectly willing to do their own work as prop makers.

Q. Was there any further meeting of the prop making department employees concerning that same question?

(Testimony of William G. White.)

A. The next day, which was Thursday, Jim Peck, who was one of my foremen there in the shop, called me about 9:00 o'clock in the morning and asked me would I come to his home.

Q. Was there any meeting after the one above cabinet shop, and before the one at Jim Peck's home?      A. No.

Q. When was the meeting in the Carpenters Hall? [143]

A. That was on a Tuesday, the way I remember it.

Q. What happened at the meeting at Carpenters Hall? Who was present?

A. Well, I think the whole same bunch of men were present.

Q. And what was the discussion?

A. The same subject was discussed, and the same conclusions arrived at, that we would not go back as carpenters. [144]

\* \* \*

Q. After March 19, 1945, did you ever make application for your old job at Warner Bros.?

A. I did.

Q. Approximately when did you make the application?

A. On the 6th day of November, I think.

Q. 1945?      A. 1945.

Q. And how did you make such application?

A. I called Mr. Gibbons over the telephone and asked him about returning to my old job, and he

(Testimony of William G. White.)

told me that it was entirely out of his control, it was up to Mr. Fuhrmann.

Q. Did you then communicate with Mr. Fuhrmann?      A. I did.

Q. Did you see him personally or talk to him on the phone?

A. No, I talked to him over the telephone.

Q. On the same day.

A. On the same day. I fact, I hung right up and made the other call.

Q. What conversation did you have with Mr. Fuhrmann?

A. I asked Mr. Fuhrmann if I could return to my old job, [148] and he said that I could not.

Q. Did you have any further conversation with Mr. Fuhrmann about it?

A. As I remember, why, he said that I would have to see Mr. DuVal or Mr. Brewer.

Q. On March 19, 1945, you were a member of Local 44, is that right?      A. Yes.

Q. And were you a member of Local 44 at the time that the strike ended October 31, 1945?

A. Yes.

Q. Were you a member on November 7, 1945?

A. Yes.

Q. Are you a member now?      A. Yes.

Q. Has there ever been any time since January, 1936, when you have not been a member of I.A.T.S.E., either Local 37 or Local 44 of that union?      A. There has not.

Q. The answer filed by the companies in this

(Testimony of William G. White.)

case says, with respect to you, that on November 18, 1945, you made application to respondent Warner Bros.—which is the company—for employment; that respondent Warner refused to employ you by reason of the fact that no vacancies existed in your job classification which you were qualified to fill. Were you ever [149] told that by anybody connected with Warner Bros.?

A. I was not. I wrote them a letter asking them for a job, but I never did receive an answer to that letter.

Q. Did you have any conversation with anyone, any official or representative of the I.A.T.S.E., after your conversation with Mr. Fuhrmann on November 7 or November 8, 1945?

A. I had no conversation with anyone after November 7th.

Q. Are you working now?                      A. No.

Q. Directing your attention to March 27, 1945, did you attend any meeting of the I.A.T.S.E., Local 44?                      A. 27th.

Q. That would be not quite a week after you were notified that you were off the payroll?

A. I did not attend that meeting, no.

Mr. Rissman: That is all.

### Cross-Examination

By Mr. Mitchell:

Q. In your capacity as foreman, you say, of the prop shop, you worked with your hands?

(Testimony of William G. White.)

A. No.

Q. Referring to Respondents' Exhibit No. 2, is your job classification the first one here, called T-1, prop and miniature foreman, at \$118.03 a week?

A. That is right. [150]

\* \* \*

Q. (By Mr. Mitchell): Well now, you have testified about a lot of things here, and the questions were so asked that they didn't line up in order. Let us start at the beginning of these meetings with either the Warner Bros. people or the I.A.T.S.E. people, with respect to crossing jurisdictional lines or doing work in the carpenter shop. When did the first meeting occur, or the first discussion with either I.A.T.S.E. people or company people that you know anything about, and where? [151]

A. The first meeting that I know anything about was the Sunday meeting that Mr. Walsh called at the Woman's Club down on Hollywood Boulevard.

Q. And at that meeting what did Mr. Walsh tell you?

A. He told us that he had told the studios that he would keep them running during this trouble, and he expected us to go in and do anything that the producers asked us to do. [152]

\* \* \*

Q. Now, where was the next meeting when a company or I.A.T. representative, talked about the jurisdictional lines?



(Testimony of William G. White.)

A. That was on Monday morning after the Sunday meeting at the Woman's Club.

Q. And that would be what date?

A. The 19th.

Q. The 19th of March? [153] A. Yes.

Q. Where was that meeting?

A. That was in the carpenter shop at Warner Bros.

Q. The prop makers were present?

A. They were.

Q. As well as other craft people? A. Yes.

Q. And who spoke at that meeting?

A. Mr. Brewer.

Q. Mr. Brewer? A. Mr. Roy Brewer.

Q. What did he tell you?

A. Practically the same thing as Mr. Walsh had told us the day before, that we was to do anything the producers asked us to do.

Q. Did he read you a telegram from Mr. Walsh?

A. I believe he did.

Q. I will show you Respondents' Exhibit No. 3 and ask you if he read you the wire dated March 12, signed by Richard Walsh?

A. I think he did. I think that is the one he read us.

Q. And referring to that, did you receive a copy of Respondents' Exhibit 3? A. I did.

Q. Through the mail? [154] A. I did.

Q. That same day or thereabouts?

(Testimony of William G. White.)

A. Tuesday afternoon. It was at home when I got home. It came that afternoon in the mail.

Q. All right. Now, when was the next meeting or conversation with any company or I.A. representative when crossing jurisdiction was discussed?

A. It was right after the meeting when Mr. Roy Brewer spoke.

Q. Where was that discussion?

A. That was in the carpenter shop.

Q. Who was present?

A. Mr. Fuhrmann came to me and asked me how the boys felt about working in the carpenter shop, and I told him that from what I had heard them say, that they would refuse. He asked me if they would take their blue slips in preference to going in as carpenters. I said, "That is the way I understand it." He said, "Yes, that is the way it will be."

Q. All right. Now, when was the next discussion?

A. Just after lunch, around 12:00 or 12:30.

Q. On what date?

A. On the 19th, a Monday.

Q. Where was that discussion?

A. That was in the prop shop. [155]

Q. Who was present? A. Mr. Fuhrmann.

Q. And the members of the prop shop?

A. Yes. He asked me to call the men all together into the prop shop, which I did.

Q. All right, what was said?

A. He told the boys that they had to keep the

(Testimony of William G. White.)

studios running, that he needed sets more than he needed props, that we were to go into the carpenter shop next morning at 7:00 o'clock and build those sets.

Q. What else occurred?

A. And Mr. Sapp spoke up and said, "Don't you think it's about time we found out how the boys feel about it?" He said, "Yes," he did, and Mr. Sapp asked the boys how many would go to work in the carpenter shop and somebody spoke up and made some merark and Mr. Sapp changed the question and said, "How many will refuse to go in?" And every man refused.

Q. Did Mr. Fuhrmann tell the boys there that he would have no use for making props unless he could get some sets made?

A. He did not. He said he needed sets more than he did props and therefore we would build the sets.

Q. All right, did anything else occur there?

A. After this the boys told them they would not work as carpenters. He says, "O.K., boys, there is plenty of prop work." He says, "Let's get back to it," or something to that effect. I don't know the exact works, and he left and [156] went back to his office.

Q. All right, and what happened next?

A. About 2:00 o'clock Mr. Gibbons came around with the blue slips and told us we were all off.

Q. What happened next?

(Testimony of William G. White.)

A. We took our blue slips and then walked out the front gate. [157]

\* \* \*

Q. Have you been working since March 19th?

A. Not in the studios.

Q. Where have you been working?

A. On some outside work.

Q. What outside work?

A. Oh, I worked down in Hollywood on a night club.

Q. Carpenter work?                      A. Cabinet work.

Q. What do you mean by cabinet work?

A. Installing fixtures, cabinets, in a night club.

Q. Isn't that carpenter work?

A. Well, there seems to be a difference in the two works.

Q. Whom were you working for on that night club?

A. Working for Mr. Sapp—the Yalta Restaurant Company.

Q. Have you worked anywhere else?

A. Oh, on a couple of days' work, one place and another.

Q. You mean a couple of days at a time?

A. Yes. [163]

Q. No other longer work?                      A. No.

Q. Did you make any effort to get work?

A. Huh?

Q. Did you make any effort to get work?

A. I worked when I wanted to work.

(Testimony of William G. White.)

Q. You were able to work whenever you wanted to work, weren't you?      A. That's right.

Q. I mean there is plenty of carpenter and cabinet work in this town if you want to work?

A. Probably so, but I haven't got a carpenter's card.

Q. Well, there is plenty of carpenter and cabinet work in this town without a carpenter's card, isn't there?      A. I don't work without a card.

\* \* \*

Q. (By Mr. Mitchell): I asked you, Mr. White, about working for others since March 19. Have you worked for yourself on any project? Do you own a piece of property of some sort?      A. Yes.

Q. What kind of a piece of property? [164]

A. I own a piece of property out in North Ridge.

A. A farm?

A. Well, a small walnut ranch.

Q. Have you spent your time working there?

A. Part of it.

Q. How many acres?

A. Well, I have about an acre and a half?

Q. Is that where you live?      A. No.

Mr. Mitchell: That is all.

Trial Examiner Riemer: Mr. Luddy?

Q. (By Mr. Luddy): How many years did you work in the studios, Mr. White, without a card?

Mr. Rissman: I object.

Trial Examiner Riemer: Overruled.



(Testimony of William G. White.)

The Witness: Well, since 1923 to about 1929, and from about 1931 to 1936.

Q. (By Mr. Luddy): This work you were doing building cabinets and putting in show cases in this night club, does that fall within the jurisdiction of the Carpenters in the Building Trades Council?

A. It does. [165]

\* \* \*

Q. I show you what purports to be a photostatic copy of a letter, and ask you if that isn't the letter that Mr. DuVal read to your group there at that meeting at 6:30 on the evening of the 19th of March?

A. I think that that was what he read.

Mr. Luddy: I ask that this be received in evidence. It has heretofore been marked for identification, I think. No, it hasn't been identified.

(Thereupon the document above referred to was marked I.A.T.S.E.'s Exhibit No. 1 for identification.) [167]

\* \* \*

### Redirect Examination

By Mr. Rissman:

Q. Mr. White, you testified that on March 12 and March 13 you did not go to work?

A. That is right.

Q. Is that right? A. Yes.

Q. Now, did you ever refuse to do any work in the prop making department? A. I did not.

Q. When you went back on March 14 and at that

(Testimony of William G. White.)

time up until you received the blue slip on March 19, did you ever refuse to do any work in the prop making department?           A. I did not.

Q. Did you have any reason for refusing to work in the carpenter shop?

A. I had plenty of reasons. [168]

Q. What were your reasons?

A. I could not see my way to be a scab, which I would have been if I had worked in the carpenter shop, if I had went in the carpenter shop to work. Also, I took the same obligation Mr. Sapp took when I became a member of Local 44.

Q. After March 19, 1945, and down to the present time, have you been ready and willing to accept immediate employment or re-employment on your former job in the prop shop of Warner Bros.?

A. I have.

Q. Are you willing to accept such reinstatement now?           A. I am.

Trial Examiner Riemer: Are there any further questions?

Mr. Rissman: That is all.

Mr. Luddy: Yes, I have a question.

Trial Examiner Riemer: Mr. Mitchell?

Mr. Mitchell: Nothing further.

Trial Examiner Riemer: Mr. Luddy?

#### Recross-Examination

By Mr. Luddy:

Q. You knew that the International president of your labor organization had advised you and the

(Testimony of William G. White.)

Trial Examiner Riemer: Sustained. [171]

Q. (By Mr. Luddy): You considered that if you obeyed the orders of the International president of your organization under the circumstances which you have stated in response to my questions, that by so doing you would be a scab, did you?

A. That is right.

Mr. Luddy: That is all.

Trial Examiner Riemer: Mr. White, before March 12, 1945, at Warner Bros. Studios what work did the carpenters do in the mill or carpenter shop, as distinguished from the work that you did in the prop shop? What was the difference between the work?

The Witness: The carpenters built the sets. In other words, to illustrate that, this room is a set. The carpenters built the walls, the ceiling, and the floor. Everything in this room, this desk, those chairs, all that is props. We built those props. They were not allowed to build anything that is a prop is a set unless it was—in fact, I think I have heard some officials of the I.A. define a prop as anything that is not a part of the walls or the ceiling.

Trial Examiner Riemer: Or the floor?

The Witness: Or the floor. Anything that is not connected as a part of that wall, ceiling, or the floor is a prop.

Trial Examiner Riemer: Can you state as a matter of your own knowledge what work you would

(Testimony of William G. White.)

have performed, what [172] work you would have done had you worked in the carpenter shop on and after March 19th, 1945?

The Witness: We would have built those sets, built the walls, the floors, the ceilings, or any other part of that set that the carpenters had done, had been doing for years which we have never done. [173]

\* \* \*

Mr. Mitchell: Mr. Examiner, in preparing the answer to the amended complaint, there were certain clerical errors made, and by inadvertence a paragraph was left out which had been included in the answer to the original consolidated complaint. So that these errors may be corrected I will ask [174] counsel for the Board to stipulate, first, that the answer to the amended complaint may be amended on page 6 in the sixth line by striking out the words, "J. C. Goudie and Chas. J. Larsen." Is that agreeable, Mr. Rissman?

Mr. Rissman: I have no objections to your amendment to the answer as you propose it.

Mr. Mitchell: Is that agreeable to the Examiner?

Trial Examiner Riemer: It is agreeable to me. So that now the proposed amendment in which there is no objection is to strike from paragraph 12, subdivision a, of respondents' answer, the two names J. C. Goudie and Chas. J. Larsen. Is that correct?

Mr. Mitchell: That is correct, sir.

Mr. Rissman: No objection.

Trial Examiner Riemer: The stipulation is accepted, and it is so corrected. [175]

\* \* \*

GEORGE STOICA, JR.

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Rissman:

Q. Will you state your name, please?

A. George Stoica, Jr.

Q. Mr. Stoica, were you ever employed at Warner Bros? A. I was.

Q. When were you employed there?

A. I started in at Warner Bros. in February, 1929.

Q. And how long did you work there?

A. Up to March 19th, 1945.

Q. And what kind of work did you do at Warner Bros.?

A. I started in the property department, worked there for a few months—[177]

Q. What kind of work did you do in the property department?

A. Hauling furniture around, and books, and other props, dressing sets, or helping with dress sets.

Q. What else did you do there at Warner Bros.?



(Testimony of George Stoica, Jr.)

A. I then transferred to the location department, where I done office work and kept records. I then went into the production office, where I made out daily schedules and other office work. From there I went into the sound department, where I worked for approximately two years on wax recordings, and there for a period of about three months I was out of work, and I managed to get back in at Warner Bros. on a labor gang, where I worked until I got into the prop shop, and I went into a little place under a stairway there where they had a few doorknobs in place, and I started building that department up, which later became known as the hardware department, a part of the prop shop, but a separate shop, and I worked, built that up, and worked there up to the day that I was fired.

Q. How long did you work in this place that you call the hardware shop?

A. About 11 or 12 years.

Q. Can you describe the nature of your work in this hardware shop, what your responsibilities and duties were?

A. Well, we made, with the exception of the cheap cast hardware, we made all the door locks, bronze door locks, door [178] knobs, railroad hardware, ship hardware, push bars, panic bolts, every grill, door checks, plates, every type of hardware, made all the lettered signs. We had a stock of letters of all sizes and characters. We made up

(Testimony of George Stoica, Jr.)

the signs and after they were shot we took the letters off.

Q. You say after they were "shot." What do you mean by that?

A. After they appeared before the camera. We made patterns, metal patterns, had them cast, machined them, filed them, done all metal work.

Q. During all of that period did you ever do any carpenter work? A. No, sir, I never have.

Q. Have you ever built any sets?

A. No, sir.

Q. Under whose supervision were you working during that entire period in the hardware shop?

A. That was a very strange setup. I was supposed to be under the prop shop, and therefore under the supervision of Jimmy Gibbons and Mr. White.

Q. Referring to William White who just testified? A. That's right.

Q. You say you were supposed to be under their supervision. Were you?

A. None of them ever came in there during the time I was there, or ever bothered or showed any other interest in it. [179] I practically run the thing myself.

Q. Who was your boss, if anyone?

A. The only one that I ever answered to was F. T. Fuhrmann, Fuzzy Fuhrmann. The only time I had anything to do with him was when he threatened to fire me several times.

(Testimony of George Stoica, Jr.)

Q. Mr. Fuhrmann? A. That's right.

Q. Now, did you go to work on March 12, 1945?

A. I did not.

Q. Why didn't you go to work on that day?

A. There was a picket line in front of Warner Bros., and I couldn't get the clear picture of what we were supposed to do, or weren't supposed to do. There was a lot of confusion, so I went home.

Q. Were you asked to go through the picket line and go to work at any time after March 12, 1945?

A. No, I don't believe I was asked. We got together——

Q. You say "we"?

A. Most of the fellows that are in this room and the fellows that went back, in other words, the prop shop group. I remember out in front of Warner Bros., I believe it was, they had received some telegram or some letter or something telling them to ignore the picket line, to go in and do their work.

Q. Do you recall what day that was, keeping in mind that the strike started on March 12th, on Monday? [180]

A. I believe it was the next day, and they decided that they would go in to work Wednesday morning.

Q. Did you go to work on Wednesday morning?

A. I did.

\* \* \*

Q. Now, did you continue to work in the hardware department until March 19? A. I did.

(Testimony of George Stoica, Jr.)

Q. And did you work on March 19?

A. I did, up to about 1:45.

Q. What happened at 1:45?

A. At 1:45 I left to keep an appointment with a dentist to have two teeth removed.

Q. Did you get your blue slip on March 19?

A. I did.

Q. At what time?

A. Approximately 7:00 o'clock that evening.

\* \* \*

Q. (By Mr. Rissman): Was Charles Jensen employed in the prop shop at Warners?

A. He was.

Q. And you say he was employed as a cabinet maker? A. That is right.

Q. Did you see him at these two meetings you have already testified about?

Mr. Mitchell: Which two? He has testified to three so far.

Trial Examiner Riemer: No.

Mr. Mitchell: I beg your pardon.

Mr. Rissman: Two meetings.

Mr. Mitchell: He testified to one addressed by Walsh at the Women's Club, one addressed by Brewer on March 19, and one at noon on March 19.

Mr. Rissman: You are right, Mr. Mitchell.

Q. (By Mr. Rissman): I am talking about the two meetings in [187] the shop.

A. That is what I figured. I can't remember having seen any particular fellow or not. I know

(Testimony of George Stoica, Jr.)

that Jesse was there, and Gus. There was a continuous milling around and talking one to the other.

Q. Well, did you go to work at any time after March 19, 1945, at Warner Bros.?

A. No, sir; I did not.

Q. On March 19, 1945, were you a member of Local 44?           A. I was.

Q. How long have you been a member of Local 44, I.A.T.S.E.?

A. I was a member of Local 37, and I went into 37 in 1936; and in 1939 when it was dissolved and Local 44 was created, I became a member of Local 44.

Q. And how long did you remain a member of Local 44?

A. Up to the day that I received notification of my expulsion, on June 14, 1946.

Q. Prior to June 14, 1946, and back to 1936, when you first became a member of any local of the I.A.T.S.E., was there ever any time that you were not in good standing in the I.A.T.S.E.?

Mr. Mitchell: Wait a minute. I object to that on the ground it calls for his conclusion.

Trial Examiner Riemer: Overruled.

The Witness: Will you read that, please?

Trial Examiner Riemer: Read the question.

(The question was read.)

The Witness: No, sir, there never was.

Q. (By Mr. Rissman): After the strike was terminated, did you attempt to get your job back at Warner Bros.?



(Testimony of George Stoica, Jr.)

A. Yes, I did. After the strike was terminated, and also before.

Q. Well, before the strike was terminated what efforts did you make in that respect, and when?

A. Well, I knew that Mr. Fuhrmann had coffee across the street at a drug store every morning at 9:30, so I made it my business to run into him accidentally several times. And each time I asked him if there was any possibility of my getting back to my job, and he informed me very clearly that unless I agreed to go into the carpenter shop that I couldn't work at Warner Bros. again. Then——

Q. Do you recall approximately when you met him in this drug store or coffee shop?

A. No, I couldn't.

Q. When the strike was terminated, did you have any conversation with any Warner Bros. official with respect to returning to work there?

A. Yes, I had called up Mr. Fuhrmann.

Q. When? To what are you going to refer there?

A. It is a note that I made on a piece of paper alongside the phone on November 10, the night that I called him. [189]

Q. And the piece of paper that you now have is the note you made at the time you made the telephone call?

A. That is right.

Q. All right. Tell us what conversation you had with Mr. Fuhrmann on November 10, 1945.

A. Do you want me to read this, or just——

Q. Just give us your testimony after you have refreshed your recollection from that note.

(Testimony of George Stoica, Jr.)

A. I told him that Barney, that I heard that Barney was called into work.

Q. Who is Barney?

A. Barney is the afternoon man in the hardware room, the hardware department. And I told him I had been away from home, and I wanted to know if there was a call for me, and he said no. He said, "You sign the call book." He said, "If we need any prop makers, we will call the local." I said, "How about hardware men?" He said, "I have got one coming in." And I told him that because of the freeze that had been declared over the motion picture industry, that the only job I could go back to was the job that I held on March 19, and that the only place they could send me is back to my old job. He said, "We have all the help we need." It so happened I had signed the call book on November 9th at 10:30 in the morning, and Barney Allsdorf had never signed the call book, yet Barney was called in to go to work, and I wasn't. [190]

Q. Is Barney Allsdorf you refer to the Barney that was referred to as being the afternoon man?

A. That is right.

Q. Where did you sign this call book?

A. In the call office of Local 44.

Q. Who is Tinny Wright?

A. Tinny Wright is the production manager of Warner Bros.

Q. Did you have any conversation with him on or about October 31, 1945?

(Testimony of George Stoica, Jr.)

A. I did, when the —

Q. Where did it take place?

A. I was standing in the time office at Warner Bros., and I called him on the phone at his office.

Q. What conversation did you have with him?

A. I told him that we had been waiting around all afternoon to go back, to go to our jobs, that everyone else had gone in to work and that we had tried to get in touch with Carroll Sachs, and they kept telling us that he was in conference and couldn't be reached. And I asked him if he couldn't please go down there and find out just where we stood. A short time later I saw him driving out, and he saw me and he stopped the car and said that Mr. Sachs was very busy, but had promised that he would straighten us out the first chance he had.

Q. Did you ever have any conversation with Carroll Sachs with respect to your request to return to work?

A. Yes. At one time I went to the front entrance at Warner Bros.

Q. When was this, approximately?

A. It was shortly before we filed the charges with the National Labor Relations Board. I have been trying to find some record of the date, and I can't. I know we had gotten together and decided we would take action under the N.L.R.B. Act, and before we took that action I wanted to see if there wasn't any possibility of settling this thing without going to that extreme. I called Mr. Sachs' office

(Testimony of George Stoica, Jr.)

from the entrance, and he notified the officer to let me in. I went directly to his office and went in, and Art Shafer, his secretary, was seated across the desk from him, and Mr. Sachs was very nice. He asked me what he could do for me, and I told him the things that I said a moment ago, that my reason for being there was to see if we could make any settlement or get our jobs back without casting any more reflection on Warner Bros. He told me that it would be unfair to give us our jobs back or pay us for the time we had lost, it would be unfair to the men who had co-operated with the studio and gone in and done carpenter work. I thanked him, I told him if that was his answer that there was nothing for us to do but to file those charges. He told me not to be in such a hurry. He said, [192] "Sit down for a while and we will talk this over." And he wanted to know our reason or my reason for refusing to do carpenter work. He said, "Didn't you feel you owed the company some loyalty?" And I told him that I didn't feel I owed the company anything, that if I hadn't given a little bit more than they had paid for I wouldn't have worked there 16 hours in stead of 16 years. And I asked him where the company's loyalty was to the men who had worked there for them and built the studio up where it was, that I had seen no sign of it. And Art Shafer asked me why I didn't run for council again. And Mr. Sachs took it up and he said, "Why, that was very silly for you to do what you did."

(Testimony of George Stoica, Jr.)

He said, "Do you realize it is going to cost you votes?" I said, "I can't see that. I can't see where refusing to scab will cost me anything." We had quite a conversation. [193]

\* \* \*

Q. (By Mr. Rissman): Some time in the latter part of January, 1946? A. That's right.

Q. All right, and what conversation did you have with Mr. Brewer with respect to your re-employment at Warner Bros.?

Mr. Mitchell: Objected to as being immaterial. Mr. Brewer is not a representative of Warner Bros.

Mr. Rissman: If the Examiner please——

Trial Examiner Riemer: I have been waiting for an objection of this type for a long time. There has already crept into the record a lot of conversations between the complainants here and members of the union in the absence of any of the respondents' officials. Now no objection has been made heretofore——

Mr. Mitchell: I have been trying to be reasonably co-operative, but when you get off into who were re-employing people for Warner Bros., that gets a little bit out of bounds so far as we are concerned. We will do our own employing.

Mr. Rissman: I think Mr. Mitchell argued that the offer, when the last witness was on the stand, of a job or if there was an offer of a job to him by the union, it was material and part of respondents' case.

Trial Examiner Riemer: Do you offer this testi-



(Testimony of George Stoica, Jr.)

mony or [196] propose to offer it as binding on the respondent, what Mr. Brewer may or may not have said to the witness? I don't see how you could do that.

Mr. Rissman: I offer this testimony with respect to the respondents—or the intervenor's position as to why the men were not employed.

Mr. Mitchell: I don't care what Mr. Brewer says as to why they weren't employed. It's what Warner Bros. says as the reason why they weren't employed.

Trial Examiner Riemer: Overruled. Do you remember the question?

Mr. Rissman: I can repeat it.

Q. (By Mr. Rissman): Tell us what conversation you and Mr. Brewer had at that time about your going back to work at Warner Bros.

Mr. Mitchell: Same objection.

Trial Examiner Riemer: Same ruling, overruled.

The Witness: Well, I had heard that Mr. Brewer was keeping us out of our jobs. I wanted to find out whether there was any truth to it. I went in and I told him that several of us had charges against us, but that the majority of us didn't, and I asked him to please let these men get back to work, they needed the work and had lost quite a bit, and I pleaded with him, and he says, "George, believe me, we're not keeping these men out of their jobs." I says, "You mean to say that [197] I could go back to Warner Bros. tomorrow if I could get my job back?" He says, "Yes, you can go back there or

(Testimony of George Stoica, Jr.)

anyplace else you want to. We're not keeping you out of that job."

And he went on tell me his experiences in the labor movement and all that work.

Q. (By Mr. Rissman): After January, 1946, did you make any further attempts to see anyone at the studio with respect to getting your job back?

A. After January, 1946?

Q. Yes, or did you make any other attempt in addition to what you have already told us?

A. That was November.

Q. At any time after November did you make any further attempts to get your job back at Warner Bros.?

A. No, I don't believe I have. [198]

\* \* \*

Q. Did you have any reason for refusing to go work in the carpenter shop in March of 1945?

A. Several reasons.

Q. What were your reasons?

A. In the first place my work as a hardware man brought me in contact with carpenters and set designers, and I felt that if I went in there and done carpenter work that when the strike ended that I would not be able to run that department efficiently.

Q. Did you ever state that reason to any Warner Bros. company official or executive?

A. I stated that reason to Fuzzy Fuhrmann many times, every time and any time I saw him. I tried to make it clear to him and convince him that every time a carpenter or a set designer walked into

(Testimony of George Stoica, Jr.)

that shop after the strike was over that it would cause nothing but trouble and unsatisfactory work.

Q. Did you have any other reasons for not wanting to work in the carpenter shop?

A. Yes, as I started to say a while ago, I called my wife up——

Mr. Luddy: If we are going to be advised of his acts because of something his wife said, I submit it is a waste of [199] time to take it in the record.

The Witness: I'll put it this way——

Trial Examiner Riemer: Give us your reason.

Q. (By Mr. Rissman): Give us your reason.

A. The reason was my wife said she wouldn't live with a scab.

Mr. Rissman: That's all.

### Cross-Examination

By Mr. Mitchell: [200]

\* \* \*

Q. You say you were handed a blue slip?

A. Right.

Q. Were you willing to do carpenter work?

A. No, sir. [201]

\* \* \*

Q. Were you at that meeting at Jim Peck's house? A. That's right.

Q. Did you return to work with the other men?

A. No, sir, I was the only one that stayed across the street.

Q. You refused to go back in? A. Correct.

(Testimony of George Stoica, Jr.)

Q. You wouldn't do carpentry work?

A. I wouldn't do carpentry work. [202]

\* \* \*

Q. Well, did you receive a copy of Respondents' Exhibit No. 3?      A. That's right, I did. [203]

\* \* \*

Q. (By Mr. Mitchell): I will show you I.A.T.S.E. Exhibit No. 1 for identification and ask you if you have ever seen that or a copy of it?

A. That, sir, I have never seen.

Q. Did Mr. Walsh state at the Women's Club meeting in substance what is contained in that letter?      A. Yes.

Q. And when was that Women's Club meeting?

A. It was on the Sunday, the 18th, I believe, of March.

Q. On the 19th of March you knew that Warner Bros. wanted you to do work in the carpentry shop, didn't you?

A. Well, I presume that Warner Bros. wanted us to do carpentry work when Mr. Fuhrmann got us together in the carpentry shop and had Mr. Brewer tell us that, yes.

Q. And you didn't indicate any willingness to do carpentry work, did you?      A. No.

Q. To the contrary, did you indicate you wouldn't? [204]

A. I didn't indicate anything.

Q. Were you a party to any of those votes that were taken not to do carpentry work?

(Testimony of George Stoica, Jr.)

A. Yes, the one in the prop shop, I might have stuck my hand out.

Q. That you wouldn't do it?

A. I wouldn't do it.

Q. You say that you received a blue slip which said "Refused to do carpentry work" or "Carpenter work."

A. Yes, sir.

Q. And who gave you that blue slip?

A. James Gibbons.

Q. And did you say anything to him about being an error, that you refused to do carpenter work?

A. No, sir. [205]

Q. That was the fact, wasn't it, that you wouldn't do carpenter work?

A. Well, I wouldn't do carpenter work, no.

Q. You didn't make any complaints to him about it and tell him you would like to do carpenter work?

A. No, because I compared it to the other fellows, and it was the same thing.

Q. Well, you knew at that time that you could go on working at Warner Bros. if you would do carpenter work, didn't you?

A. That's right.

Q. And you didn't make any offer to Gibbons or anybody else, did you?

A. No, I did not offer to do carpenter work.

Q. You say you were present at a meeting addressed by Mr. Brewer on March 19th?

A. That's right.

Q. What did he tell you about the carpenters trying to raid the prop makers union?



(Testimony of George Stoica, Jr.)

A. Well, frankly, I didn't pay too much attention to what he was saying.

Q. Well, do you remember anything that he said?

A. Yes, he said something about the carpenters in 1933 had done something to them, and he tried to convince the fellows that if they didn't go in there, that the Conference of Studio Unions would probably take over everything in the industry, [206] take everything in the industry away from the I.A.T.S.E. and we would all be out on our ear—a very dark picture.

Q. And did he urge you to go in and do carpentry work, or whatever work the Producers asked you to do?

A. That's right. [207]

\* \* \*

Q. (By Mr. Luddy): Mr. Stoica, were you aware of the fact that Mr. Walsh, the International president of the I.A.T.S.E., had issued an order directing members of the I.A.T.S.E. to ignore the picket lines which were placed around the studios when the strike began on March 12th?

A. I became aware of it on the afternoon of the 13th.

Q. And you obeyed that order by going through the picket lines, did you?

Trial Examiner Riemer: I didn't get that question. Will you read it?

(The question was read.)

The Witness: Yes.

(Testimony of George Stoica, Jr.)

Q. (By Mr. Luddy): Did you attend the meeting which Mr. Walsh addressed at the Women's Club on Sunday the 18th of March? [218]

A. I did.

\* \* \*

Mr. Rissman: Mr. Mitchell, can we read that into the record by stipulation without the necessity of getting copies?

Mr. Mitchell: It is all right with me.

Mr. Rissman: If the Examiner please, this blue slip, the form which is identical with Respondent's Exhibit 4, reads as follows. I will read only the typewritten——

Mr. Mitchell: I suggest we read the whole thing.

Mr. Rissman: I will read the whole thing then.

"Warner Bros. Pictures, Inc., Badge No.:"  
Blank. "Offpayroll notice. Name: George J. Stoica. No.: 87850. Date: 3/19/45. Hour finished: X. Rate: 1.71. Occupation: Hardware man, Local 44. Department: Technical. Remarks: Refused to do carpenter work. All company property has been checked in and payment to employee is hereby authorized. Storekeeper:" The line is blank. "Approved: F. C. Fuhrmann."

Attached to it is a white slip which reads as follows:

"Warner Bros. Pictures, Inc., Burbank, California. Clearance Ticket. Date: 3/19/45. Permission is hereby granted to George J. Stoica, prop shop, to remove from the studio the following personal property: Tool pass. I have examined the

(Testimony of George Stoica, Jr.)

above material and authorize its removal from the studio. F. C. Fuhrmann, Department [229] Head, B.D.”

Q. (By Mr. Rissman): Were those two slips given to you on the evening of March 19, as you testified yesterday? A. That's right. [230]

\* \* \*

### L. G. BATCHELDER

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Rissman:

Q. Will you state your name, please?

A. Lynn George Batchelder.

Trial Examiner Riemer: Is that spelled L-y-n-n?

The Witness: That's right.

Q. (By Mr. Rissman): Are you the person who is named in these proceedings as L. G. Batchelder?

A. Yes.

Q. Were you employed at Warner Bros., Mr. Batchelder? A. Yes.

Q. And how long were you employed there?

A. A short time, maybe a month and a half, something like that.

Q. Some time before when?

A. Before the strike.

Q. What kind of work were you doing there?

(Testimony of L. G. Batchelder.)

A. Prop making.

Q. And in which departmetn or which shop?

A. I had work in both shops at the time, most of the time in the cabinet shop.

Q. Who was your immediate supervisor? [232]

A. I worked both under Jesse Sapp and Peck.

Q. When you were working at Warner Bros. were you a member of any labor organization?

A. A member of Local 44, I.A.T.S.E.

Q. And how long had you been a member of Local 44, I.A.T.S.E.?

A. I will look it up and see, if I have it with me. I have my card with me but I believe at that time it was——

Q. When did you first become a member of that local?

A. I don't remember. It was about two years at that time.

Q. Do you recall that you became a member of that local in approximately October of 1942?

A. I know it was in October or November and it would be approximately about 1942.

Q. And did you remain a member in good standing from the time you became a member and all the time that you were working at Warner Bros.?

A. Yes.

Q. Are you a member of any labor organization now?

A. The only card that I have is the I.A.T.S.E., Local 44, which I had a suspension of six months

(Testimony of L. G. Batchelder.)

and a \$300 fine. I did not pay the \$300 fine. My dues are paid, however.

Q. What kind of work were you doing on March 10, 1946?

A. I was working in what is known at Warner Bros. as the cabinet shop, part of the prop making department, and I believe, I am not absolutely positive, because I was working on [233] the set for a while, was working on a lucite piano, but as I remember I was on the jet part of the lucite top, I believe, I was on the lucite top. I am not positive.

Trial Examiner Riemer: Did you say March 10, 1946, Mr. Rissman?

Mr. Rissman: If I did I am mistaken. It was March 10, 1945. May the record be corrected?

Trial Examiner Riemer: Yes.

Mr. Rissman: Is that what you understood?

The Witness: I understood it 1945, just before the strike is what I understood.

Q. (By Mr. Rissman): Did you work on March 12, 1945? A. Yes, I worked—on March 12?

Q. That is the day of the strike.

A. No, that is the day of the strike. No, I did not.

Q. Did you work the following day?

A. No. I believe it was Thursday that I—

Q. Directing your attention to March 19, 1945, did you work on that day?

A. March 19, I believe that was the last day that I worked at Warner Bros. [234]



(Testimony of L. G. Batchelder.)

Mr. Rissman: Will you stipulate that the slip which the witness has handed to me and which I have now in my hand has typed in his name, Lynn G. Batchelder, No. 05015, date 3/19/45, hour finished X rate per day, occupation prop maker, department technical, remarks, refused to do carpenter work.

Mr. Mitchell: I will so stipulate.

Mr. Rissman: Thank you. [235]

Q. (By Mr. Rissman): When did you get that blue slip, Mr. Batchelder, and from whom?

A. Just before it was quitting time at Warner Bros., as I remember it, I believe Mr. Jimmie Gibbons, who was head of the property making shop at Warner Bros., gave it to me. It had a tool pass attached to it, but I took my tools out at that time.

\* \* \*

Q. March 19th, the day on which you received the blue slip.

A. Yes, I did.

Q. Do you recall what was said by Mr. Fuhrmann at that time?

A. We were called into the shop as a group and Mr. Fuhrmann spoke to us and he said that they were going to keep the studios open regardless of what, and that we would be expected to do whatever they asked, carpenter, painting and machinists, or anything that they asked, and he wanted us as a group to say whether we would or we would not, and he said, "If you don't do this, you will not work at Warner Bros. again, and don't misunder-

(Testimony of L. G. Batchelder.)

stand me, boys; furthermore, you will not only not work at Warner Bros. but you will not work in the motion picture industry again." [236]

\* \* \*

Q. Did you ever have any conversation with Mr. Fuhrmann after March 19, 1945, with respect to getting your job back at Warner Bros?

A. Yes, I called after the strike was over and we went to go in and there was no cards for us, they would not allow us to go in, so Mr. George Stoica tried to call them and was unable to get them.

Mr. Mitchell: Can we have a date before we hear this conversation?

Q. (By Mr. Rissman): What was this date that all this happened?

A. Well, George Stoica called up the day that the strike was over.

Q. The last day? A. When they all went in.

Q. When all the fellows were coming back?

A. Yes.

Q. All right. Go ahead.

A. And I am not positive of the date, but I believe it was the next day that I called Mr. Fuhrmann up on the telephone finally and got hold of him and asked if there was a call for my job, L. G. Batchelder, and he said there was not; stand by. So I stood by. [238]

Q. Are you willing to go back to your former position at Warner Bros.? A. Yes, I am.

Q. Have you been willing to go back and accept

(Testimony of L. G. Batchelder.)

reinstatement to your old position at all times since March 19, 1945?      A. At Warner Bros., yes.

Q. At Warner Bros.      A. Yes.

Mr. Rissman: That is all.

Cross-Examination

By Mr. Mitchell: [239]

\* \* \*

Q. (By Mr. Mitchell): Did you receive a copy of Respondent's Exhibit 3, which I now show to you?

A. Well, I received a copy like that, outside there was no seal on it. It says seal here. I don't know whether it is this—— [240]

\* \* \*

Q. Did you attend the meeting in the mill at Warner Bros. on March 19, 1945, at which Mr. Brewer directed the Local 44 members to cross jurisdictional lines and perform any work that was assigned to them by the studio representatives?

Mr. Rissman: Object to the form of the question.

Trial Examiner Riemer: Overruled. You may answer.

The Witness: Yes, I attended that meeting where Mr. Brewer spoke. I don't remember——

Q. (By Mr. Mitchell): What was that last?

A. I said I don't remember. I didn't finish it. I don't remember his exact words. They were in that substance, however.

Q. Did you attend the meeting on the same day in the prop shop at which Mr. Fuhrmann directed the propmakers to do carpenter work?

(Testimony of L. G. Batchelder.)

A. Very definitely, I did. [242]

\* \* \*

Q. (By Mr. Mitchell): On March 19, 1945, did you attend a meeting at Warner Bros. at approximately 6:30 p. m.?

A. I did.

Q. And at that meeting did Mr. Fuhrmann again direct the men, the Local 44 prop makers, to do carpentry work?

Mr. Rissman: Object to the use of the word "direct." I have no objection to his stating what occurred there.

Trial Examiner Riemer: Objection sustained.

Q. (By Mr. Mitchell): Where was the meeting held at 6:30 in Warner Bros.?

A. In a little office in the middle of the big building there.

Q. Who was present?

A. Oh, the majority of the morning shifts. I do not know all of them.

Q. Prop makers?

A. That's right.

Q. Were Mr. DuVal and Mr. Fuhrmann present?

A. Part time, yes.

Q. All right. Now, during the time that they were present, [244] just state as near as you can what happened from the beginning, giving if you don't remember their exact words, the substance of what was said.

(Testimony of L. G. Batchelder.)

A. Well, the substance was the same as before, asking us to do that work.

Q. Well, just what did Mr. Fuhrmann say, as near as you can remember?

A. Well, at that time there was a great deal of talk going on and just exactly what Mr. Fuhrmann said—it was all in the same substance, so I wouldn't—

Q. Did he tell you that it was Warner Bros.' instruction to you to go in there and do carpenter work?

A. No, not at that time. As I remember the discussion it was whether we would or not.

Q. Well, at this meeting didn't he ask you to go in and do carpenter work?

A. I couldn't say that he did at that time. The whole discussion at that meeting as far as Mr. Fuhrmann is concerned was whether we would or not. He had told us previously.

Q. He had told you to go in previously, to go in and do carpenter work?

A. He had asked us if we would as a group.

Q. He told you that Warner Bros. wanted you to. Was there any question about that? [245]

\* \* \*

The Witness: He asked us to as a representative of Warner Bros.

Q. (By Mr. Mitchell): He did more than that, he told you that if you didn't do it, you would never work at Warner Bros. again, didn't he?

A. He told us if we didn't we would never work



(Testimony of L. G. Batchelder.)

at Warner Bros. again or in the motion picture industry, make no mistake about it.

Q. He made it perfectly clear that Warner Bros. wanted you to and was directing you to do carpenter work, didn't he?

A. He made it perfectly clear that Warner Bros. wanted us to. [246]

\* \* \*

Q. After October 31, 1945, did you put your name on the I.A.T.S.E. Local 44 call book?

A. No, I did not. [249]

\* \* \*

Q. Well, you know that Local 44 maintains a hiring hall in which they send employees to the various studios, don't you?

A. Oh, yes, I know that.

Q. Do you know that the way to get employment through Local 44 is to sign the call book, don't you?

A. No, I don't know that that is the only way, because that is a way. However, a majority of the studio men, if they are capable at all, do not as a general rule work through the call book except when there is a slack period of a few days and they want extra work, because they are known to all the studios and therefore we call up the studio and talk to them, that way.

Q. Yes, but when a man is out of work and the studio doesn't call him back, you know that a way is available to him to get other employment through signing up the call bok, isn't that right?

(Testimony of L. G. Batchelder.)

A. Well, they have a call book for that purpose, yes.

Q. Isn't what I said right?

A. I said they have a call book for that purpose. I presume that answers it. [251]

\* \* \*

### Redirect Examination

By Mr. Rissman:

Q. You were asked by Mr. Mitchell if you would have gone back to work at Warner Bros. between March 19th and October 31, 1945, to do carpenter work or to work in the carpenter shop, and you answered that you would not.

A. That is right.

Q. Why wouldn't you?

A. Because I don't care to be a scab. I don't care to do the other fellow's work. I don't feel that the working man has any right to go in and do the other fellow's work. They won't do themselves any good and they won't do Warner Bros. any good and they won't do their country any good. [257]

■ ■ ■

## JOHN G. GOUDIE

a witness called by and on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified as follows:

## Direct Examination

By Mr. Rissman:

Q. Will you state your name, please?

A. John G. Goudie.

Q. Where do you live, Mr. Goudie?

A. 11171 Blick Street, North Hollywood.

Q. Were you employed by Warner Bros.? [266]

A. I was. [267]

\* \* \*

Q. Did you return to work at Warner Bros. on June 3rd, 1936?

A. As a grip.

Q. How long did you continue working as a grip?

A. Until the 10th day of March, 1945.

Q. From June 3, 1936, to March 10, 1945, were you ever off from work at Warner Bros. for any reason whatsoever? \* \* \*

A. In 1937, I think it was the first two weeks in May and the last week in May of that year, I was laid off on call.

Q. And after the end of May, 1937, were you ever laid off at all while working at Warner Bros. as a grip?

A. Only in slack times. In other words, at times

(Testimony of John G. Goudie.)

that they would say we have no work now for probably a week, and in that time they would give me a ring and I would work one day in that week, and they done that three consecutive weeks in 1938. I think that was in April.

\* \* \*

Q. While you were working at the studios from June 1936 to March 10, 1945, were you a member of any labor organization?

A. I was a member of the I.A.T.S.E.

Q. Which local?

A. Local 37, which eventually changed to 80.

Q. What is a grip?

A. Well, their duties are, you might say, a second hand carpenter or a second class carpenter rather.

Q. Let's not start any quarrels with the carpenters here. [269]

A. They have the erecting of platforms for lighting the sets, taking care of the scrim work, backings, making them into backings, and they are, you might say, an assistant to the camera man in shooting pictures. They roll the iron horse and set the diffusion, and so forth. [270]

\* \* \*

Q. Are you a member of any labor organization at the present time?

A. I am still a member of Local 80, I.A.T.S.E.

(Testimony of John G. Goudie.)

Q. Are you working at the present time?

A. No, I am not.

Q. Has there ever been a time when you were not a member in good standing of Local 80 since you first joined that union? A. Never.

Q. Did you go to work on March 12, 1945?

A. No, I went to the studio and they had a picket line across the entrance, so I didn't go through.

\* \* \*

Q. Did you go to work at any time between March 12, 1945, and October 31, 1945?

A. No, I didn't.

Q. Why not?

A. Well, I figured that I was still an employee of Warner Bros. I had never been laid off. My work had always been satisfactory, and I had never put my name on the call book at the local in all the time that I had belonged to 37 and 80 until I think it was February either 14th or 15th of this year, and I always got my calls, if I was off from work one night or a day, I always got my call direct from the studio, and I figured that I was a permanent employee of Warners.

Q. Did you ever get a call from the studio during the strike? A. No.

Q. Directing your attention to October 31, 1945, did you at that time have any conversation with any of your superiors [274] or supervisors at Warner Bros.?



(Testimony of John G. Goudie.)

A. The afternoon that the men went back in, I went to Mr. Ketcham and I asked him if he had a call for me and he said no. A call is a job. And he says, "I think I have your telephone number up there, haven't I?" and I says, "Yes, you have" and that was the end of the conversation [275]

\* \* \*

Q. (By Mr. Rissman) : Did you have any conversation with Mr. Barrett at any time in January, 1946, with respect to [295] your signing the call book?

A. Yes.

Q. Approximately when was it?

A. I think it was on the 21st day, I believe, of January.

Q. Was it a telephone conversation?

A. Yes.

Q. Tell us what you said and tell us what Mr. Barrett said in that conversation.

A. I called the local and was answered by Bill Holbrook, the secretary of our local, and I asked him if a member that was in good standing was eligible to accept work at any major studio and he says, "Yes, if you sign the out-of-work book or the call book, why," you was eligible.

Q. Was this conversation with Mr. Holbrook rather than Mr. Barrett?

A. Yes, this was Mr. Holbrook. He says, "Wait just a minute. I'll turn you over to Bill Barrett." So I asked Mr. Barrett the same question and he gave

(Testimony of John G. Goudie.)

me the answer that if your name was on the call book and a call came in and you was in good standing, you was eligible to go into any major studio. I said, "Then if my name was on the call book and Warner sends in a call for a grip, would I get that?"

He says, "Oh, no, you have got a case against Warner Bros." [296]

\* \* \*

Q. Did you ever get any call from Warner Bros. to return to your job as a grip?

A. No, I have not.

Q. Did you ever get any call from Local 80 to go to work as a grip at Warner Bros.?

A. No, I haven't.

Q. Did you ever get any call from Local 80 to go to any other place as a grip? ..

A. Yes, I signed the call book on February 14. I got a [297] call that night at 6:00 o'clock to report at Republic Pictures at 6:00 o'clock in the morning.

Q. Did you report to Republic?

A. Yes.

Q. How long did you work there?

A. I worked five days.

Q. Did you ever receive any other calls from Local 80?

A. No, I never did. I never signed the book after that. [298]

\* \* \*

(Testimony of John G. Goudie.)

Redirect Examination

By Mr. Rissman:

Q. Mr. Goudie, in all the time that you worked for Warner Bros., whenever you were off because of lack of work or for any other reason, was it necessary for you to sign the call book to get your job back?      A. No, sir.

Q. Were you always called back?

A. I was either called back, at times when it was a little bit slack our foreman would take three or four men out of the gang and say you lay off tomorrow night and come back the following night, and then they would rotate the rest of the men during that slack period.

Mr. Rissman: That is all.

Recross-Examination

By Mr. Mitchell:

Q. Mr. Goudie, on previous occasions, on [301] occasions of a layoff, then the studio after that when they decided they needed you again would notify you, is that right?      A. That is right.

Q. Were there occasions when you failed to show up for some reason?

A. Not that I know of, unless I was sick or something like that.

Q. Well, were there occasions when you were sick?

(Testimony of John G. Goudie.)

A. Oh, yes, I have been known to be sick several times.

Q. Didn't you notify the studio when you were ready to go to work again?

A. No, sir, I just went and started in, just as though——

Q. You just went in?

A. Just went in and worked like that, like I worked Tuesday and I would go back on Wednesday morning.

Q. You didn't wait for a call from them, did you?

A. No.

Q. You just went in when you got well and reported ready to work?

A. That is what I did at the time of the termination of the strike. It was stipulated everybody was to return as of March 10th, and I understood that was the agreement with all of the boys that was out, regardless of whether they was on strike or not, and I went in, but they had no call for me. [302]

\* \* \*

### CHARLES J. LARSON

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Mr. Luddy: May we go off the record a moment?

Trial Examiner Riemer: Off the record.

(Testimony of Charles J. Larson.)

(Discussion off the record.)

Trial Examiner Riemer: On the record. The witness has been sworn.

Direct Examination

By Mr. Rissman:

Q. Will you state your name, please?

A. Charles J. Larson.

Q. Were you employed at Warner Bros., Mr. Larson?

A. Yes, sir.

Q. When did you work there?

A. Well, from 1934 until the strike.

Q. That is up to March 12, 1945?

A. Well, I worked to the 19th.

Q. What kind of work did you do at Warner Bros. during that period 1934 to March 1945?

A. Started in as a laborer, then as a rigger, then as a grip.

Q. How long did you work as a grip?

A. Since the time the grip took over the rigging crew, which [304] was in 1942, I think it was, or 1941, I don't know which.

Q. At any rate, since some time in 1942 you have been working as a grip?

A. Yes, rigger and a grip.

Q. Under whose supervision?

A. Working with Lamie Ketcham.

Q. During the time that you worked as a grip,



(Testimony of Charles J. Larson.)

were you a member of any labor organization at the studio?      A. I. A. T. S. E. 80.

Q. Local 80 of the I. A. T. S. E.?      A. Yes.

Q. How long were you a member of that organization?      A. 11/1/42.

Q. Are you still a member?      A. Yeah.

Q. Are you in good standing at the present time as far as you know?      A. Yes.

Q. Did you go to work on March 12, 1945, the first day of the strike?      A. No.

Q. When did you go to work after March 12, 1945, keeping in mind that that was on a Monday?

A. It would be the 15th.

Q. That would be on Thursday of that week?

A. Thursday, yeah.

Q. And where did you go?

A. Went into the grip room.

Q. Did you work as a grip on that day?

A. Yeah.

Q. How long did you continue working as a grip after March 15, 1945?

A. To the 19th, about 10:00 o'clock in the morning when they asked me to do carpenter work and I said no.

Q. Who asked you to do carpenter work?

A. Tull, foreman of the grip gang.

Q. Is that T-u-l-l?      A. Yes.

Q. And can you tell us what conversation you and Mr. Tull had at that time?

A. There wasn't no conversation. He said, "If

(Testimony of Charles J. Larson.)

you don't do carpenter work, go over to the grip room."

Q. Did you go over to the grip room?

A. Yes.

Q. Whom did you see there?

A. I had to wait for Ketcham to come in and I asked him to get my discharge slip and availability slip.

Q. Now when you say "discharge slip" are you referring to the blue slip?      A. Yes. [306]

Q. The kind that has been introduced as Respondent's Exhibit 4?

A. Well, yes, the discharge slip that you are through working there and also I wanted my availability slip.

Q. Did you get an availability slip or a discharge slip?

A. No. He said they had issued too many of them already and wasn't issuing any more of them. He says, "You just go home."

Q. Did you ever get any discharge slip from Warner Bros. after that?      A. No.

Q. Did you ever make any attempt to go back to work at your job as a grip? That is, after March 19, 1945?

A. Yes, after the strike was over.

Q. What did you do?

A. I was told to call in the grip office, which I did.

Q. Who told you to call the grip office?

(Testimony of Charles J. Larson.)

A. I don't remember who it was told me, but I was told to call there and find out whether I was going in or not.

Q. Did you call the grip office? A. I did.

Q. And do you know with whom you spoke?

A. Well, it was Mr. Ketcham's office but I don't know who was on the telephone that told me that it was no——

Mr. Mitchell: Wait a minute, now. You have answered [307] the question. Let's get some foundation as to what date this was.

Q. (By Mr. Rissman): When was this?

A. The 12th.

Q. The 12th of what.

A. That would be November.

Q. 1945? A. Yes.

Q. And you called the grip office but you don't know with whom you spoke, is that it? A. No.

Q. Was it a man or a woman? A. Man.

Q. What conversation did you have with whoever answered the telephone there.

A. I asked them——

Mr. Mitchell: I object to it as being no proper foundation laid.

Trial Examiner Riemer: Sustained.

Mr. Mitchell: He may have talked to the office boy or somebody else.

Q. (By Mr. Rissman): Did you ask for Mr. Ketcham's office? A. Yes.

Q. Was Mr. Ketcham there as far as you know?

(Testimony of Charles J. Larson.)

A. I don't know. [308]

Q. Do you know with whom you spoke?

A. Evidently it was the fellow in charge there, taking care of the telephone.

Q. Had you——

Mr. Mitchell: I move that the answer be stricken on the ground it is not responsive.

Trial Examiner Riemer: Motion to strike denied. [309]

Q. (By Mr. Rissman): Had you ever called into the office there before while you were working?

A. Yes.

Q. And left any messages there? A. Yes.

Q. For what purposes had you formerly, or earlier, called the office?

A. Well, if you were off some time, or wanted to be off some time, you had to call in and let them know.

Q. Well, when you called in for those purposes, did you know with whom you were talking? Did you know the name of the person?

A. Just a clerk in there, whoever it happened to be.

Q. And have you left messages with whoever answered the telephone there in the past?

A. Yes.

Q. And have you received any messages from them? A. Yes.

Q. And is that what you did on or about November 10th, or was it 12th? A. The 12th.

(Testimony of Charles J. Larson.)

Mr. Mitchell: I object on the ground it is leading and suggestive. He is trying to tell the witness what to say.

Mr. Rissman: The witness has already said it.

Trial Examiner Riemer: Overruled. [310]

Mr. Rissman: May the question be read?

Trial Examiner Riemer: Read the question.

(The question was read.)

Trial Examiner Riemer: You may answer it.

The Witness: Yes.

Q. (By Mr. Rissman): What conversation did you have with whoever answered that telephone in that department?

Mr. Mitchell: I object to that on the ground it is immaterial what conversation he had with some office boy or clerk.

Trial Examiner Riemer: May be, but I'll take it. Overruled.

Q. (By Mr. Rissman): You may answer it.

A. He told me that there was no call for us, and also he would let me know if one come in.

Q. Did you give him your name — did you have any conversation with Mr. Ketcham?

A. Yes.

Q. When did that occur?

A. About the 2nd, I believe, of November, or December — after the strike.

Q. 1945? A. 1945, yes.

Q. What conversation did you have with Mr. Ketcham?



(Testimony of Charles J. Larson.)

A. I asked him to go back in and go to work.

Q. What did he say?

A. He said he didn't know, we would have to find out from the union. [312]

\* \* \*

Q. (By Mr. Rissman): Did your local, Local 80 of the I. A. T. S. E. declare a strike against the studios in March, 1945? A. No.

Q. Did you participate in the picket lines, or in any of the strike activities of the people who were on strike? A. No.

Q. Did you tell anybody representing Warner Bros. that you [313] were on strike?

A. I don't know just what you mean.

Q. Did you ever tell any of your bosses at Warner Bros. that you were striking?

A. Well, I wasn't striking, with the exception that I wouldn't go through the picket line.

Q. What did Mr. Tull ask you to do on or about March 19th, 1945?

A. Put up a set on the stage.

Q. Now, was that your work as a grip, putting up sets? A. Not that, no.

Q. Whose work was that? A. Carpenter's.

Q. What did you tell Mr. Tull when he asked you to put up a set on the stage?

A. I told him that two weeks before that they told me I couldn't put up a board to fill in between two walls, on account of that was carpenter work, so I absolutely couldn't set up a set.

(Testimony of Charles J. Larson.)

Q. Did you have any reason for refusing to do carpenter's work when you were asked to do so by Mr. Tull?      A. Yes.

Q. What was your reason?

A. I wouldn't take another man's job that was out on strike.

Q. Before you were a member of Local 80, I. A. T. S. E., were [314] you ever a member of any other labor union?      A. 724, 727.

Q. Those are Laborers' Locals of the American Federation of Labor?

A. Yes, the American Federation of Labor.

Q. And Local 727 is a local affiliated with the I. A. T. S. E., isn't it?      A. Yes.

Q. How long were you a member of each of those unions, Local 724 A. F. of L. and Local 727 I. A. T. S. E.?      A. I don't remember.

Q. Altogether how long have you been a member of any labor union?

A. I have been for a good many years, different labor unions, and those were at the studios, and the first one must have been 1935 or 1936, and then from then on, between the two until I joined 80. [315]

\* \* \*

Q. (By Mr. Rissman): Were you ready and willing and able to go back to work at Warner Bros. to your former job as a grip?      A. Yes.

Q. Have you been ready, willing and able to do that at all times since the end of the strike?

(Testimony of Charles J. Larson.)

A. At all times.

Mr. Rissman: Take the witness.

Cross-Examination

By Mr. Mitchell:

Q. Did you ever sign the Local 80 call book after the end of the strike?

A. Yes, I did once.

Q. When?

A. When Mr. Goudie signed it too, the 14th I think it was, somewhere around, I don't really remember.

Q. Did Local 80 send you out on a job?

A. No. One trouble was I didn't have no telephone at the [316] time, or they probably would have called me. I don't know.

Q. Did you sign it again, or keep your name in the call book?      A. No.

Q. Did you have another job?      A. No.

Q. Didn't you want a job?

A. For Warner Bros., yes.

Q. Anybody else?      A. Not necessarily, no.

Q. Well, you were not willing to work for anybody else except Warner Bros., were you?

A. Well, I left Warner Bros., and figured I was entitled to go back there.

Mr. Mitchell: Will you read him the question, please?

(The question was read.)

(Testimony of Charles J. Larson.)

Mr. Rissman: I submit the question has been answered.

Trial Examiner Riemer: I suppose in his own way that is an answer.

Mr. Mitchell: Maybe you understand the answer?

Trial Examiner Riemer: I think I do.

The Witness: If you figure that I was not willing to go to work for anybody else, it would depend a lot on what job it was, how far it was to travel, and several things like that.

Q. (By Mr. Mitchell): Did you make an effort to get another [317] job?           A. No.

\* \* \*

### GEORGE M. HAND

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Rissman:

Q. Will you state your name, please?

A. George M. Hand.

Q. Were you employed by Warner Bros., Mr. Hand?           A. I was.

Q. How long were you employed there?

A. I have been there approximately two years, maybe a little better, two years, or maybe a little better.

Q. And when did you work there?

(Testimony of Charles J. Larson.)

A. I worked there, last worked there on March 19th.

Q. 1945?           A. 1945.

Q. In what department were you working? [318]

A. Prop shop.

Q. What kind of work were you doing?

A. Prop making, rigging, high man, high work.

Q. Who was your boss there?

A. Gus White was my boss.

Q. And did you work under anybody else?

A. Jim Gibbons. Jim Gibbons was the head boss.

Q. During the time that you worked for Warner Bros., were you a member of any labor organization?

A. I belonged to the I.A.T.S.E. Local 44.

Q. And how long were you a member of that union?           A. Since 1939.

Q. Were you always in good standing in that union?

A. I don't quite get your question.

Q. Were you always a member in good standing?

A. Yes, sir.

Q. Are you a member of that Local today?

A. Yes, sir, up to the time they—my dues are paid for next month. I am under suspension, six months suspension, but my dues are paid up for this quarter, which ends November 1st., I believe.

Q. 1946?           A. 1946.

Q. When did you receive notice of the suspension? Was that on about June 14th or 15th?



(Testimony of George M. Hand.)

Mr. Mitchell: I object to that on the ground that is already the subject of a stipulation.

Trial Examiner Riemer: It has been covered hasn't it? Doesn't the stipulation cover all these questions of suspension and expulsion?

Mr. Luddy: It does, but not the fines, and that only becomes material where the fines have not been paid, by reason of the clause of automatic expulsion.

Trial Examiner Riemer: I believe that question has been answered.

Q. (By Mr. Rissman): Do you know approximately when you received notice of the suspension?

A. Yes, I received my suspension some time in May, I believe. I was working at the time for United Artists, and I was fired on the orders of the union for the United Artists some time in May, just the date I don't remember.

Q. Before the strike was started on March 12, 1945, did you ever work in the carpenter shop at the Warner Bros. studio?      A. No, sir.

Q. Were you ever asked to work in the carpenter shop during that time? [320]

A. I was.

Q. When were you asked?

A. I was asked I think it was the 19th of March.

Q. Well, my question is directed to before the strike, to before March 12, 1945, were you ever asked to work in the carpenter shop?

(Testimony of George M. Hand.)

A. No, I was not.

Q. Were you ever sent to work in the carpenter shop?

A. No, sir.

Q. As a prop maker, what are some of the operations you performed there at Warner Bros.?

A. Well, I worked at prop making, takes up a lot of operations. It takes up the special effects, it takes up sometimes snow boxes, it takes up going high and putting up the snow boxes and operating them, and it takes fog making, fog for the sets and special effects, and it takes in the building of boats and miniature boats and operating them.

Q. What was your classification?

A. Prop maker, miniature builder and special effects.

Q. Did you receive a blue slip on March 19, 1945?

A. Yes, sir.

Q. Did you bring that with you?

A. Yes, sir.

Mr. Rissman: Mr. Mitchell, could we stipulate to read into the record the typewritten material on this slip, which [321] in printed form is identical with the Respondent's Exhibit No. 4?

Mr. Mitchell: Yes.

this slip, which [321] in printed form is identical with the printed form of Respondent's Exhibit No. 4, reads, the typewritten material reads as follows:

"Name, George M. Hand, No. 38721; Date 3/19/45, Hour Finished, X; Rate paid per day; Occupation, prop maker; Department, technical; Remarks, re-

(Testimony of George M. Hand.)

fused to do carpenter work," and it is signed "F. C. Fuhrmann."

Q. (By Mr. Rissman): Did you go to work on March 12, 1945?      A. No, sir, I did not.

Q. When did you go to work after that?

A. I think it was the Wednesday morning, I think it was the second day after that. I went in when the rest of the boys went in.

Q. That would be March 14, 1945?

A. I think it was March 14, to be exact.

Q. How long did you continue to work there after that?      A. Until March 19th.

Q. What occurred on March 19th with respect to your employment?

A. Well, we were told, we were asked, called together and asked by Fuzzy Fuhrmann, like a demand, to go into the shop and do carpenter work, and told the sets were necessary and [322] we were to go and build them sets.

Q. What else did he say?

A. So then, well, just before that, previous to that we were asked by the union representatives, Cappy DuVal and Roy Brewer and the other one I don't remember who it was, and was told that it was a strike and we had to go in and help them because the studios asked us to do it, and then when we went back to work again at prop making, just a little time after that, maybe an hour or so, after that, Fuzzy Fuhrmann came along and we were told that we were to go in the shop and do

(Testimony of George M. Hand.)

carpenter work, and the boys, somebody asked the explanation, as I remember right one of the boys was asked to go and he says that he had never done carpenter work because he is a metal man and doesn't even carry a saw and doesn't know how to operate a machine or anything. It is proper under the law to——

Q. Tell us what was said.

A. That was all that was said. He said if we didn't go in and do carpenter work that was it, it would be the blue slip.

Q. Did you go in to do carpenter work then?

A. No, we did not.

Q. How long after that did you get the blue slip?

A. We got the blue slip I believe around 2:30 in the afternoon. Mr. Gibbons brought the slips out and called everybody [323] over.

Q. Did you ever go back and try to get your job back after March 19, 1945?

A. I didn't quite get the question.

Q. After you received the blue slip, did you at any time ever go back and try to get your job back at Warner Bros.?

A. Well, I didn't try to get my job back with them, as there was a telephone call came from Warner's, told me to report to the carpenter shop.

Q. It was a telephone call?

A. That call came, I don't remember whether it was that same night, somebody called and told my

(Testimony of George M. Hand.)

wife that I was to report to the carpenter shop and do such work, set building, that was to be in the carpenter shop.

Q. Did you report?           A. No, I did not.

Q. Did you have any reason for not wanting to do set work or carpenter work?           A. Yes, I did.

Q. What was your reason?

A. Because I didn't want to be a scab. I didn't want to take jobs away from other men or other crafts and work which did not belong to us.

Q. After the strike, did you ever try to get your job back? [324]           A. Yes, sir, I did.

Q. What did you do in that respect?

A. Well, I went with Mr. Lora to answer the phone and called up the shop, because I am a little hard of hearing, and he answered the phone, took him for that purpose.

Q. Are you referring to Raymond Lora who is in the courtroom?

A. Ray Lora, yes, sir; he called up the shop, and he couldn't get anyplace, so I understand, couldn't get anyplace and we was told there we had to report to the union, and see Mr. Brewer or Cappy DuVal of the union in order to get back.

Q. Were you ever called back to work by Warner Bros. after the strike?           A. No, I was not. [325]

\* \* \*



(Testimony of George M. Hand.)

Cross-Examination

By Mr. Mitchell:

Q. Mr. Hand, since the date of the termination of the strike, October 31, 1945, have you been employed?

A. Been employed since the termination of the strike?

Q. Yes.

A. Yes, sir, I was employed at United Artists.

Q. During all that period of time?

A. No, not during all of that period of time. Probably—I don't remember just when—I went in some time after the strike.

Q. How long after?

A. I believe I went in in January and worked a week or two for general service through the local, through the call office at the local.

Q. You signed the call book? A. Yes, sir.

Q. When did you sign the call book?

A. I think the call book was signed some time in November, I believe. [334]

Q. Of 1945?

A. Yes. I think it was some time in November. I don't just remember the dates or anything, but it was some time after the termination of the strike, and I got a call. I believe I worked two days of last year for Monogram and then I think—I worked about three days of that year, I think, about three days—and then after the first of the year, why, they sent me to United Artists.

(Testimony of George M. Hand.)

Q. Have you been there ever since?

A. Then I worked at United Artists and they got slack and I was laid off and then I was recalled there again—not through the call office but through the boss of United Artists—and I worked up until the union ordered me discharged for the suspension.

Q. Well, how long a period of time were you laid off at United Artists?

A. Oh, maybe a week or two, something like that.

Q. So that except for a week or two since some time in January 1946 up until June you were working steadily at United Artists?

A. That is right. [335]

\* \* \*

Q. Did you attend the meeting across from Warner Bros. Studio on March 13th at which Mr. DuVal read a telegram from Mr. Walsh dated March 12, 1945 directing Local 44 members to cross the picket lines? A. I was there with that group, yes.

Q. And on or about March 13, 1945 did you receive a copy of Respondent's Exhibit No. 3, which I show you?

A. Yes, I believe I did receive a copy of that. I believe I did. [336]

\* \* \*

Q. (By Mr. Mitchell): Were you present at a meeting on March 19, 1945 in the mill at Warner Bros.? A. Yes, sir, I was.

(Testimony of George M. Hand.)

Q. Did you hear Mr. Brewer direct the prop makers to cross jurisdictional lines and perform any work assigned by the studios?

A. No, I was a little hard of hearing and I didn't quite get the drift of the conversation.

Q. Did you learn at any time that Mr. Brewer had directed [337] the prop makers at Warner Bros. to do any work assigned by the studios?

A. Through Mr. Fuhrmann, through Mr. Fuhrmann's meeting of the 19th, when we were ordered to go in there into the carpenter shop and do the carpenter work.

Q. You didn't hear Mr. Brewer say anything like that?

A. No, sir, I did not.

Q. On March 19, 1945, at a meeting in the prop shop, did Mr. Fuhrmann direct the Warner Bros. prop makers to do carpentry work?

A. He did.

Q. Did you refuse?

A. I refused.

Q. Were you at any time willing to do carpentry work?

A. No, sir.

Q. At no time during the period between March 19, 1945 and October 31, 1945?

A. That is right.

Q. You were not willing to do carpentry work?

A. I was not willing to do it.

Q. Even though requested to do it by the studio?

A. That is right. [338]

\* \* \*

Q. Now in addition to being suspended for a

(Testimony of George M. Hand.)

period of six months by that sentence, were you also filed the sum of \$300? [339]      A. Yes, sir.

Q. And did the sentence provide that with respect to the fine of \$300 that it was payable within two months from the date of the notification of the sentence, and if within the two months' period that fine was not paid you would stand automatically expelled from the I.A.T.S.E. and Local 44?

A. That is right.

Q. Now, you have never paid the fine of \$300, have you?      A. I did not. [340]

\* \* \*

### RAYMOND M. LORA

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Rissman:

Q. Please state your name.

A. Raymond M. Lora.

Q. Are you the same person who is named in these proceedings as R. M. Lora?

A. That is right.

Q. Were you employed by Warner Bros., Mr. Lora?      A. Yes, sir. [343]

Q. When?      A. Approximately two years.

Q. Up until when?      A. March 19, 1945.

(Testimony of Raymond M. Lora.)

Q. And what was your occupation at Warner Bros.?  
A. Prop maker.

Q. How long have you been a prop maker?

A. Three years.

Q. Were you a member of any labor organization during the time you were working for Warner Bros.?  
A. I.A.T.S.E., Local 44.

Q. How long had you been a member of Local 44?

A. November 1st, 1943.

Q. Are you still a member of Local 44?

A. No, sir.

Q. When did your membership expire?

A. May 31, 1946.

Q. Were you one of those who was expelled?

A. Expelled.

Q. Before you were a member of the I.A.T.S.E., were you a member of any other labor organization?

A. Local 1052, United Brotherhood of Carpenters and Joiners.

Mr. Luddy: I can't quite hear you.

The Witness: Local 1052, United Brotherhood of [344] Carpenters and Joiners.

Q. (By Mr. Rissman): A. F. of L.?

A. Right.

Q. And where is Local 1052?

A. 9034 Beverly Boulevard, Beverly Hills—I should say Melrose Avenue, Beverly Hills.

Q. Is that a local of the Carpenters Union outside of the motion picture industry?  
A. Right.



(Testimony of Raymond M. Lora.)

Q. What kind of work were you doing during the time that you were a prop maker at Warner Bros.?

A. Working on a process body—well, all types of prop making.

Q. Did you do any special effects work?

A. Yes.

Q. What is special effects work?

A. Special effects pertains to making of fog, smoke, fire, explosions, some types of wind, snow, cobwebs, spider webs——

Q. I think that is sufficient, unless you want to give us some more. Under whose supervision did you work?

A. In special effects?

Q. In special effects, or in working in the prop shop?

A. In the prop shop, under Gus White.

Q. How about special effects? [345]

A. That is Freddie Ponedel.

Q. What is his title?

A. I couldn't tell you that. I don't know.

Q. Is he in the prop department?

A. He is not.

Q. Or is special effects a separate department?

A. At Warner Bros. the special effects is a separate department from the prop shop.

Q. Immediately prior to March 12, 1945, were you working in the prop shop or were you working on special effects?

(Testimony of Raymond M. Lora.)

A. Working in the prop shop.

Q. What kind of work were you doing?

A. Working on a process, 1941 Buick, I believe it was, building the process body. My particular job on that was cutting segments from the doors and regular framing of this automobile.

Q. What type of material were you using?

A. Well, it was wood, some metal and some canvas and rubber.

Q. Did you go to work on March 12, 1945?

A. No, sir.

Q. On March 13, 1945, did you hear any statement or did you have any conversation with Mr. DuVal of the I.A.T.S.E.?      A. No, sir, I didn't.

Trial Examiner Riemer: Wait a minute. That is a [346] double question there. I don't know what the witness' answer means.

Mr. Rissman: Well, I will rephrase the question.

Q. (By Mr. Rissman): On March 13, 1945, did you have any conversation with Mr. DuVal, Cappy DuVal?      A. No, sir.

Q. At any time on March 13, 1945, did you hear him make any statement or speech or address the workers in any manner?      A. No, sir.

Q. When did you go to work after March 10, 1945?

A. I went Thursday, the following Thursday.

Q. That would be March 15?

A. Thursday, yes, it would be the 15th. I went a day after the rest of the boys went.

Q. And what kind of work did you do for the balance of that week?

(Testimony of Raymond M. Lora.)

A. I worked on this process body.

Q. Were you on the day shift?

A. Day shift.

Q. How long did you continue to work on the process body?      A. Until 2:30, March 19th.

Q. Directing your attention to March 19, 1945, did you attend any meeting out at the studios that was addressed by Roy Brewer?

A. Yes, sir. [347]

Q. Where was that meeting held?

A. In the mill at approximately 11:00 o'clock.

Q. How did you happen to be at the mill at that time?

A. Mr. White spoke to us all and he told us to go in the mill, that they were all congregating in there. For what reason, I didn't know.

Q. Now what did Mr. Brewer say at that time and place?      A. He said a whole lot.

Q. Tell us what you recall.

A. He told us that the I.A.T.S.E. intended to keep the studios rolling, and asked each and every one of us to help as far as we could, to do whatever work that we were asked to do and the whole substance was keeping the studios rolling.

Q. Was there any other conversation or statement by anybody at that meeting at that time and place?

A. I don't recall any at that meeting.

Q. Did you hear any address or statement made by Mr. Fuhrmann on March 19, 1945?

(Testimony of Raymond M. Lora.)

A. That was a meeting in the prop shop.

Q. All right, what time of the day was that?

A. That was around noontime.

Q. And what did Mr. Fuhrmann say?

A. Well, he came and told the boys that he expected us to go over in the mill and lay out the sets and build the sets, [348] that the sets was what he needed right then, it wasn't props—he needed sets and he expected each and every one of us to help them out as much as we could. [349]

Q. Did he say anything else?

A. Yes, the question was asked him by one of the boys, what would happen if we didn't go in and build those sets, or do whatever they asked us to do. Mr. Fuhrmann said that we would be eliminated from the studios if we didn't do as instructed.

Q. Did anything else occur at that meeting around noon which was addressed by Mr. Fuhrmann?

A. I don't remember.

Q. Was any vote taken at that time as to whether the men would or would not go into the carpenter shop?

A. Yes, there was a vote taken. I can't remember whether it was Mr. Sapp or Mr. Gibbons that asked us who would go in, and finally someone said, "What do you mean, go in?" or something like that, and then they said, "Who won't go in?" and I think everyone raised their hands, they wouldn't go in.

Q. Did you go into work in the carpenter shop?

(Testimony of Raymond M. Lora.)

A. No.

Q. Did you have a reason for not going?

A. Why, I had lots of reasons for not going in.

Q. What were your reasons?

A. My card didn't call for me to do carpenter work, and therefore there is no union that is authorized to have you work other than what your card calls for, and I just couldn't go in there and scab, you know, and scab on fellows that live [350] right in my immediate neighborhood. Eight or nine of them live right out there in Burbank right with me, and I couldn't go in and do their work while they were out there in that picket line. I couldn't do that.

Q. Did you get a blue slip on March 19th?

A. Yes.

Q. Do you have it with you?           A. Yes.

Mr. Rissman: Mr. Mitchell, may we stipulate that this blue slip which you have just examined in printed form is the same as Respondent's Exhibit 4?

Mr. Mitchell: And that it contains thereon as the name Raymond M. Lora, the number 54673, the date 3-19-45, the rate \$1.71, the occupation prop maker, the department, technical, the remarks: Refused to do carpenter work, and the signature as approved, F. C. Fuhrmann, yes.

Mr. Rissman: Thank you very much.

Q. (By Mr. Rissman): Who gave you that blue slip, Mr. Lora?           A. Jim Gibbons. [351]

\* \* \*



(Testimony of Raymond M. Lora.)

Q. Did you attend any other meeting of the prop makers at any time around March 19th or 20th or in through there?

A. I believe it was the afternoon of the 20th. I wouldn't [357] be certain, but I believe the afternoon of the 20th all of the prop makers assembled in the leather room over the cabinet shop.

Q. The leather room?

A. Well, it is a balcony over the cabinet shop. They call it the leather room.

Q. How did you happen to be assembled there at that particular time?

A. I got a call from someone to be there.

Q. Someone from the studio or one of the workers who had been discharged?

A. Out of the technical office, as I recall.

Trial Examiner Riemer: What is the date of this?

The Witness: The 20th.

Mr. Rissman: The afternoon of the 20th.

The Witness: Tuesday.

Q. (By Mr. Rissman): Which would be the same afternoon that—the afternoon of the same day that you met across the street from the plant and decided not to go into the carpenter shop?

A. As I recall, that's the day. I didn't make any notes, or anything.

Q. Well, at least it's around that time?

A. Yes, it is.

Q. And you got a call from someone in the technical office to come to the meeting? [358]

(Testimony of Raymond M. Lora.)

A. Yes, I believe it was.

Q. And you went in response to that call?

A. That's right.

Q. Who was present when you got there?

A. There was all of the prop makers that had been dismissed, and three or four, as I recall, that worked on the afternoon shift.

Q. Who was in charge of that meeting?

A. At that time, as I recall, we elected as chairman Bill Simpson.

Q. Is he one of the employees who was discharged?

A. That's right.

Q. And what occurred at that time?

A. Well, we talked it over, whether we would go back or not, and various one's opinion on it, and we got various opinions on it, and it was a unanimous vote that we would not go back in; that is, the mill. We were willing at all times to work as prop makers and to do our work, but we would not go over in that mill. We voted unanimous to that stand not to go over in that mill and scab. [359]

\* \* \*

Q. When was the next time you went back to see anyone at the studio about getting your job back?

A. Well, the day that the whole bunch of men went back, October 31, I guess it was.

Q. That was when everybody was supposed to go back, the end of the strike?

A. Everybody was supposed to.

Mr. Mitchell: Just a moment. I object to that

(Testimony of Raymond M. Lora.)

question upon the ground it assumes a fact not in evidence, and it is leading and suggestive.

Mr. Rissman: I will rephrase it. [364]

Mr. Mitchell: There never was an occasion when everybody was supposed to go back.

Trial Examiner Riemer: Isn't that the Cincinnati agreement?

Mr. Mitchell: No. That agreement was that the strikers were to go back, not these I.A.T.S.E. men that wouldn't do the work that was assigned to them.

Trial Examiner Riemer: Objection sustained.

Mr. Rissman: We will argue that when we come to it.

Q. (By Mr. Rissman): Are you referring to the date that the picket lines were taken off and employees went back to work?

A. That is right.

Q. And did you apply for your job or attempt to get back to work that day?

Mr. Mitchell: Just a moment. I object to that on the ground it calls for a conclusion. I don't object to having the conversation, but having the thing characterized and getting an answer without any foundation is what I am objecting to.

Trial Examiner Riemer: Overruled.

Q. (By Mr. Rissman): Do you want the question read, Mr. Lora?

A. It was 1:00 o'clock——

Trial Examiner Riemer: Do you want the question read [365] back?

(Testimony of Raymond M. Lora.)

The Witness: No, I recall the question. It was 1:00 o'clock, so the employees at Warner Bros. formed three lines in front of the studios to go in to the various windows inside of the time office to sign up to go back to work. Most all of them were inside, had already went through, and us prop makers were standing, there was no line for us, and I asked Mr. Fuhrmann where our line would be.

Q. (By Mr. Rissman): Was Mr. Fuhrmann at the gate there?

A. No, sir. I went inside the time office after him and I asked him what line we would get into, and he says, "Well, you boys don't have a line." I said, "That is strange, you were supposed to get your orders from Mr. Pat Casey to put us to work, that was my understanding." And he says, "Well, as yet I haven't got that word." I said, "I wish you would talk to Mr. Sachs and see if he has got the word."

Q. Who is Mr. Sachs?      A. Mr. Sachs is——

Q. Is he the labor relations manager of Warner Bros.?

A. That is right. Up until 8:00 o'clock that night there was no word from Mr. Casey with regard to us going back to work. The whole bunch of us waited right there, but we couldn't get in because they didn't take us back. [366]

Trial Examiner Riemer: Mr. Rissman, I don't think this record discloses who Mr. Casey is.

Mr. Rissman: Can we stipulate, Mr. Mitchell, that

(Testimony of Raymond M. Lora.)

Pat Casey is chairman of the producers' labor committee?

Mr. Mitchell: No, that is not correct. Mr. Pat Casey is chairman of the producers' committee.

Mr. Rissman: He testified to that.

Mr. Mitchell: No, he didn't testify to that. He is chairman of the producers' committee, which is a committee of the New York presidents of the companies, and an entirely different committee than the producers' labor committee. If you want to stipulate to that, I will be glad to stipulate that fact.

Mr. B. B. Cahane is chairman of the producers' labor committee at the present time. I don't remember whether was then or not.

Trial Examiner Riemer: Is that agreeable to you, Mr. Rissman?

Mr. Rissman: For the time being it will be. I will get it correctly later.

Mr. Mitchell: Well, if we are stipulating it——

Trial Examiner Riemer: Either you stipulate or you don't.

Mr. Mitchell: Stipulate not for the time being. If you want to stipulate, it is all right with me. [367]

Trial Examiner Riemer: I am sure Mr. Mitchell states the fact.

Mr. Rissman: I will stipulate that Mr. Casey is the chairman of the producers' committee.

Mr. Mitchell: That is right.

Trial Examiner Riemer: It does get a little confusing.



(Testimony of Raymond M. Lora.)

Mr. Mitchell: Well, I am sorry, but if it is confusing it is only confusing because the facts are confusing, and you don't want me to stipulate to something which is not true.

Trial Examiner Riemer: I thought he was chairman of the producers' labor committee.

Mr. Mitchell: No, sir, he is chairman of the producers' committee, which is a committee of the New York presidents of the major producing companies. The local studios of the producing companies have a committee called the producers' labor committee, which is composed of Mr. B. B. Cahane, Mr. Manix, Mr. Freeman and Mr. Work.

Trial Examiner Riemer: I get it.

Q. (By Mr. Rissman): Did you make any other attempts to contact anybody from Warner Bros. about going back to work after the end of the strike? If so, what were those attempts, and to whom did you talk and when?

A. You mean that same day?

Q. Any time, that day or any other time. [368]

A. Well, up until 6:00 o'clock we hadn't heard anything on the day we all went back, and after 6:00 o'clock our little group went inside the office in where the time clock and the time cards are, and Mr. Wright——

Q. Who is he?

A. He is production manager, I believe, of Warners.

Q. Go ahead.

(Testimony of Raymond M. Lora.)

A. He came passing by, and George Stoica and myself were right there, and George was asking if there was any word yet, or words to that effect, whether we were going back to work or not, and he said no, that there was nothing that he knew of. So we went back inside and we milled around there and observed all the time cards, who was working and who was not working. Then about 8:00 o'clock we left and went home. My next contact——

Q. What did you observe with respect to who was and who was not working in the prop shop?

A. I noticed there was quite a few permit men's cards in the rack, that I knew was permit men unless they had been taken into the local while the strike was going on.

Q. Did you make any other attempt to get your job back?

A. I went down November 6th. Mr. Hand and myself went in the little time office there where they keep the cards, to the inside telephone communications place, and I called [369] the prop shop and I asked for Mr. Gibbons and they asked who it was and I told them, and I said, "Mr. Gibbons, how about going back to work?"

And he told me that I would have to get it straightened out with my local first. I said, "What do you mean? My dues are paid up and I am in good standing."

He says, "Well, you get straightened up," and bang, that is all there was. He hung the phone up.

(Testimony of Raymond M. Lora.)

Q. Had you ever been advised by anybody prior to your conversation with Mr. Gibbons—that was November 6th, did you say?

A. The 6th, I believe it was the 6th.

Q. 1945, that you were not in good standing with the local?

A. No.

Q. Did you pay your dues?

A. Yes.

Q. Did you receive any notice of any kind, either oral or written, from any officer or representative of Local 44 that you were not in good standing?

A. No.

Q. Did you have any further conversation with Mr. Gibbons or Mr. Fuhrmann or any other Warner Bros. Studio official regarding your reinstatement?

A. None as I recall.

Q. Are you willing to accept reinstatement now to your former position?

A. Gladly. [371]

Q. Have you been willing to accept reinstatement to your former job at all times since March 19, 1945?

A. Yes, I have.

Q. Are you working now?

..

A. No.

Mr. Rissman: That is all.

(Testimony of Raymond M. Lora.)

Cross Examination

By Mr. Mitchell:

Q. Did you attend the meeting at the Women's Club on March 18, 1945, which was addressed by Mr. Richard Walsh?

A. Yes, sir.

Q. What did Mr. Walsh say with respect to crossing jurisdictional lines or doing work that the studios asked you to do?

A. That in short he expected each and every one of us to go into the studios and keep them rolling, and to just work in whatever capacity it might be. That is the substance of the whole talk.

Q. Did anybody ask him to put it in writing?

A. Not that I recall.

Q. I will show you I.A.T.S.E. Exhibit No. 1 for identification and ask you if you have seen that or a copy of it before?

A. I haven't got my glasses here.

Q. Do you want them?

A. I haven't got them here. [372]

Q. I will read it to you if you want.

A. Yes, I believe I have seen that.

Q. You will have to answer so the reporter can hear you.

A. I believe I saw that.

Q. When did you see that, Mr. Lora?

A. I think Tuesday. That would be the 20th, I believe.

(Testimony of Raymond M. Lora.)

Q. You received one through the mail?

A. I don't remember. I read it some place. I don't know whether I received one or I read it some place. Where, I couldn't tell you. [373]

\* \* \*

Q. Did you place your name on the local 44 call book?

A. I didn't go down personally to write the name there, if that is what you mean.

Q. Well, if you are out of work and you want to get work through Local 44, do you go down and sign the book yourself?

A. No, as I understand, you report to the fellow in the call office and he writes your name down.

Q. Did you do that?

A. I know I telephoned to the man with the call book, Royal Lowe, and I asked him if he would place my name on the list, and he said that he would, he said although he may be instructed later on to strike it off the list, that he would put it on.

Q. When did you ask him to do that?

A. I believe that was November 6th.

Mr. Rissman: 1945?

The Witness: 1945.

Mr. Mitchell: It has to be 1945, can't be 1946, and we are not talking about 1944, so it must be 1945.

The Witness: That is right.

Q. (By Mr. Mitchell): Did you get any call from Local 44 for a job after that?

A. No.



(Testimony of Raymond M. Lora.)

Q. When did you complete your work, all this cabinet work on this kitchen job? [375]

A. I would have to look at my stub checks. I personally don't know.

Q. Well, it was some time in the summer of 1946.

A. I should say January, February and March. I think that would be close enough.

Q. Somewhere around the first of April, did you try to get another job then?

A. Yes, there was another one that I had, but I couldn't get the lumber.

Q. Did you try to get any other jobs other than that job?

A. I couldn't get any, because there was a lumber freeze, you understand.

Q. Let's put it this way: What jobs did you try to get between October 31, 1945, and the present date? The only job you tried to get and got was this kitchen job for three months.

A. That is right, I got that.

Q. Now, what others?

A. Well, I remember this particular one, I found that I couldn't get lumber, so I didn't try again.

Q. Were those the only jobs you tried to get?

A. That's right.

Q. Other than registering or asking somebody to register you in the Local 44 call book in November, 1945, did you, prior to January 1st, make an effort to get any other job?

A. No.

(Testimony of Raymond M. Lora.)

Q. And other than this job that wasn't available because of the lumber freeze, did you, subsequent to April 1st, 1946, make an effort to get any other job?

A. No, I haven't made an effort. I haven't felt too good.

Mr. Rissman: May I have the last part of the answer?

Trial Examiner Riemer: Read the answer.

(The record was read.)

Q. (By Mr. Mitchell): You mean you have been too sick to work?

A. Not too sick, but I just haven't felt like it.

Q. You haven't felt like working?

A. Mentally and physically.

Q. You haven't felt like working.

A. That's right.

Q. How long has it been that you haven't felt like working, since April 1st?

A. Since March 19th, 1945. [377]

\* \* \*

### Redirect Examination

By Mr. Rissman:

Q. What did you mean in response to questions by Mr. Mitchell that you haven't felt like working since March 19th, 1945?

A. Well, it kind of broke me up to think that a union would treat their membership like some of us boys have been treated. [378]

(Testimony of Raymond M. Lora.)

Q. Now, this work that you did at the Italian Kitchen, the cabinet work, were you employed by somebody, or did you take that job by yourself and do it on a contract basis for the restaurant?

A. I worked for them by the day.

Q. On October 31st, 1945, did the carpenters go back to work?

A. Yes.

Q. Did the painters go back to work?

A. Yes.

Q. The electricians?

A. Yes.

Q. Did all of the various crafts or unions, employees, go back to work that day, to your knowledge?

A. To the best of my knowledge.

Q. And do you know who was on strike from March 12th, 1945, to October 31st, 1945, what unions were on strike?

A. 1421, the set designers.

Mr. Rissman: That's all.

Trial Examiner Riemer: Mr. Mitchell?

Mr. Mitchell: Yes.

#### Recross-Examination

By Mr. Mitchell:

Q. Mr. Lora, 1421 was on strike, as you say. Then weren't they having strikers' meetings? Do you know anything about that? A. No. [379]

(Testimony of Raymond M. Lora.)

Q. Didn't you know that the carpenters and painters were joining in the picket line?

A. Oh, yes, I could see that.

Q. And that there were representatives of the carpenters and painters and I.B.E.W. on the so-called strike strategy committee? You knew about that, didn't you?

A. No, I don't know anything about that.

Q. Well, you surely read something about this, didn't you?

Mr. Rissman: I object to that.

Trial Examiner Riemer: Overruled.

The Witness: Yes, I probably did.

Q. (By Mr. Mitchell): Well, didn't you know that the members of the Conference of Studio Unions were supporting this 1421 strike?

A. 1421 was on strike. The carpenters and the painters were observing their picket line. That's the way I understand it.

Q. And didn't you know—they were not only observing it, they were in the picket line.

A. I told you the way I understood it.

Q. You saw them in the picket line, didn't you?

Mr. Rissman: I object. The question has been answered.

Trial Examiner Riemer: No, it hasn't been. Overruled.

Q. (By Mr. Mitchell): Did you hear the question?

(Testimony of Raymond M. Lora.)

A. That I saw the carpenters and painters in the picket line? [380]

Q. Yes.

A. Yes, I saw them in the picket line.

Q. Did you see the I.B.E.W. in the picket line?

A. I couldn't tell you that.

Q. Did you see the screen story analysts in the picket line?

A. I couldn't tell you that either.

Q. Did you see the Cartoonist's Guild members in the picket line?

A. No.

Q. Did you see the Publicists in the picket line?

A. No.

Q. Did you see Herb Sorrell in the picket line?

A. No.

Trial Examiner Riemer: Anything else, Mr. Mitchell?

Q. (By Mr. Mitchell): Were you in the picket line?

A. No, sir.

Mr. Rissman: Object.

Q. (By Mr. Mitchell): Did you see any of these I.A.T.S.E. prop makers in the picket line?

Mr. Rissman: I object.

Trial Examiner Riemer: Sustained.

Mr. Mitchell: All right. No more questions.

Mr. Luddy: No more questions.

Q. (By Trial Examiner Riemer): Mr. Lora, do you know if the 19 men who voted at the Peck meet-



(Testimony of Raymond M. Lora.)

ing to return to work in [381] the mill were employed during the strike?

A. I saw various ones go in and out, yes. They worked there, the ones that went back in, yes, sir, they worked.

Trial Examiner Riemer: I don't think Mr. Luddy and Mr. Mitchell heard that answer.

Mr. Mitchell: No. Can it be read to us?

Mr. Rissman: Before going to that, Mr. Examiner, I think we ought to inquire as to the nature of the ballot at Mr. Peck's home.

Trial Examiner Riemer: I am not interested in the nature of the ballot.

Mr. Mitchell: Can we have that answer read before we get too far away?

Mr. Rissman: I mean this, if there was a secret ballot, he would have no way of knowing which ones voted one way or the other.

Q. (By Trial Examiner Riemer): Was that ballot at the Peck meeting by a show of hands or a secret ballot, or in writing, or how was it taken?

A. Secret ballot.

Q. Did you ask for an availability slip?

A. Yes, sir.

Q. Whom did you ask?

A. Someone at the time office there. I don't know their name.

Q. What was the answer? [382]

(Testimony of Raymond M. Lora.)

A. I was told they weren't issuing any.

Q. When was this, Mr. Lora?

A. That was, I guess that was about two months after——

Q. After what, March 19th? ..

A. After March 19th, yes, somewhere along in there. [383]

\* \* \*

### ROBERT N. BONNING

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Rissman:

Q. Will you state your full name.

A. Robert N. Bonning.

Q. Were you employed at Warner Bros., Mr. Bonning?

A. I was.

Q. And how long were you employed there?

A. Approximately two and one-half years.

Q. And in what capacity?

A. Oh, out of that two and one-half years, I was one of the shop foremen. ..

Q. In what shop?

A. For approximately two years and two months or so.

Q. What shop?

(Testimony of Robert W. Bonning.)

A. Prop shop.

Q. And under whom did you work?

A. Jimmie Gibbons.

Q. How long have you been in the motion picture industry?

A. 1940.

Q. What kind of work did you do in the industry before you worked there, Mr. Bonning?

A. I worked about three of those years in the sheet metal [390] trade.

Q. Now, at Warner Bros. did you work in any particular kind of props?

A. All types of props.

Q. Did you specialize in any particular type with respect to the material used?

A. In my own actual working in the metal as a foreman and everything.

Mr. Mitchell: Will you read that answer?

Trial Examiner Riemer: Read the answer.

(The answer was read.)

The Witness: In all types of props.

Q. (By Mr. Rissman): During the time that you were working at Warner Bros. were you a member of any labor organization?

A. 44 at Warners.

Q. Local 44 of the I.A.T.S.E.?

A. Local 44 of the I.A.T.S.E.

Q. How long were you a member of Local 44?

A. Four years.

Q. Are you still a member?

A. Yes, I am.

(Testimony of Robert W. Bonning.)

Q. Were you a member of any other labor organization at any time?

A. 108, sheet metal.

Q. Is that the Sheet Metal Workers International Union, [391] A. F. of L.?

A. That's in the building trade.

Q. That is the A. F. of L. Sheet Metal Workers Union?      A. That's right.

Q. Did you work at any time during the month of March, 1945, after March 12th of that year?

A. Yes, I did.

Q. When did you work after March 12th?

A. I believe it was March 14th we went back to work.

Q. And where did you work when you went back to work on March 14th?

A. I worked in the metal room in the back of the prop shop.

Q. And how long did you continue to work there?

A. Until I was discharged March the 19th.

Q. Now, do you recall what kind of work you were doing from March the 14th to March 19th?

A. On mechanical steer.

Trial Examiner Riemer: Mechanical what?

The Witness: Mechanical steer.

Q. (By Mr. Rissman): Now, on March 19th, 1945, were you working in this metal room of the prop shop?      A. I was.

Q. Did you attend any meeting of employees in

(Testimony of Robert W. Bonning.)

the prop shop during working hours on that day?

A. I did. [392]

Q. Tell everything that happened when you came to work on that day.

A. Well, there were rumors that we were going to have to go into the mill to do carpenter work and Jesse Sapp came around to get the boys' opinion on whether we would go in the mill, and I understood it was unanimous that we would not go into the mill.

Q. Did you hear any—or were you present at any time when Mr. Fuhrmann addressed the employees on that day?      A. I was.

Q. At what meeting were you present?

A. On the one that was held in the mill and the one that was held at the prop shop.

Q. Which one was the first one?

A. The mill.

Q. Is that the one——

A. Where Mr. Brewer addressed the employees.

Q. Mr. Brewer?      A. Yes.

Q. All right. And were you present when Mr. Fuhrmann addressed the employees?

A. I was.

Q. And did you go to work in the carpenter shop?      A. No, I did not.

Q. Why didn't you? [393]

A. For several reasons.

Q. What reasons?

A. Well, one has already been stated, the scabbing. That was one reason. Another reason was all



(Testimony of Robert W. Bonning.)

machines in the mill have signs on them: "To be operated by machine operators only." There was a state compensation law that I don't think would protect us if we operated them.

Q. Have you ever operated the type of wood-working machinery that is found in the mill?

A. No. No, I haven't. There is small types of machinery that is in the mill that we have in the prop shop.

Q. All right. Were there any other reasons?

A. Well, I have a lot of personal friends that is carpenters. I chum around with them.

Q. Did you get a blue slip on March 19, 1945?

A. I did.

Q. By whom was it signed?

A. Fuzzy Fuhrmann.

Q. Do you have it with you?                      A. I do.

Q. Will you read to us what is typewritten after the printed word "occupation" on your blue slip?

A. "Technical"—or "prop maker."

Q. And department?

A. "Technical." [394]

Q. And what is written or what is typewritten after the printed word "remarks"?

A. "Refused to do carpenter work."

Q. When was that blue slip given to you?

A. On the afternoon of March 19.

Q. By whom?

A. I believe it was Jimmie Gibbons.

Q. Did you work in the studios at Warner Bros. at any time after March 19?                      A. I did not.

(Testimony of Robert W. Bonning.)

Q. Did you ever have any conversation with any company representative after the strike ended?

A. I did.

Q. When?

A. I believe it was some time in November.

Q. Some time when?

A. In November, I believe.

Q. November, 1945?           A. That is right.

Q. With whom did you have the conversation?

A. I called Jimmie Gibbons and asked for my job back.

Q. What did Gibbons tell you?

A. He referred me to Fuzzy Fuhrmann.

Q. What did Mr. Fuhrmann say?

A. Mr. Fuhrmann—— [395]

Q. Did you talk to Fuhrmann?           A. I did.

Q. Over the telephone?

A. Over the telephone.

Q. What did he say and what did you say?

A. He said he couldn't do anything for me, that I would have to contact the Local 44. [396]

\* \* \*

Trial Examiner Riemer: It may be admitted and marked in evidence as Board's Exhibit 8.

(The document heretofore marked Board's Exhibit No. 8 for identification was received in evidence.) [399]

Q. (By Mr. Rissman): Are you working now, Mr. Bonning?           A. I am.

(Testimony of Robert W. Bonning.)

Q. In the motion picture industry?

A. Yes.

Q. Where are you working?

A. Enterprise Studios.

Q. And what kind of work are you doing?

A. Prop shop foreman.

Q. How long have you been at Enterprise?  
That's Enterprise Studios?

A. Enterprise Studios.

Q. How long have you been there?

A. Approximately five or six months.

Q. Now, before you started to work at Enterprise, did you have any permanent employment any place or any regular job?

A. No, I didn't.

Q. Do you have a permanent job now?

A. I do.

Q. After March 19, 1945, were you ready and willing to go back to work in the prop shop at Warner Bros.?

A. I was.

Q. Are you willing to go back there now?

A. Well, I have a good job now and I decided when I took that job that I wouldn't go back to Warners. [400]

\* \* \*

### Cross-Examination

By Mr. Mitchell:

Q. What was your job classification at Warner Bros. on May 10, 1945—

Mr. Rissman: May or March?

Mr. Mitchell: March 10th, I mean.

(Testimony of Robert W. Bonning.)

The Witness: Prop maker.

Q. (By Mr. Mitchell): Well, I'll show you Respondents' Exhibit No. 2, turning to the wage scale there. Just tell me which job classification you were working in. A. March 10th?

Q. Just before the strike.

A. I was taken off of the rate about a week or so before I went on this special job. I was put on the morning shift to do this particular job.

Q. Let's go back two weeks before March 10th, 1945. What [401] was your job classification?

A. As I say, a prop maker.

Q. Then you weren't a forman?

A. As I say, I was taken off the rate just prior to that job. Now, I don't know just what day it was. They have it in the record.

Q. Let's go back to the first of 1945, the first of January. What was your job classification then?

A. I was prop shop foreman.

Q. On a weekly salary?

A. On an hourly rate.

Q. Well, just show me which of these job classifications you were in then because I don't think there is a prop shop foreman on an hourly rate.

A. Right here it is. That's the new rate.

Q. You are referring to prop and miniature gang boss?

A. Well, I had not one gang—and that's what I class a gang boss—I had several gangs working out of the shop.

(Testimony of Robert W. Bonning.)

Q. All right. Your rate of pay was \$2.05 an hour?      A. \$1.95.

Q. \$1.95 per hour—that was in January, 1945?

A. Well, this is just a new listing of retroactive pay. This is a new list. We were still on \$1.95 in January, February and March.

Q. This is the contract which went into effect on January [402] 1st, 1944, and was signed on April 17, 1944, and the retroactive pay was paid long before January 1st, 1945, I am sure, Mr. Bonning.

A. I may be mistaken on that. I remember it to be \$1.95. It might have been \$2.05. [403]

Q. At any rate, the job classification you were it was T-2, prop and miniature gang boss. Is that right?      A. That's right.

Q. You continued in that classification through January and February, 1945, and some time in March, 1945, you were taken off that?

A. That's right.

Q. Now, what were you put on in the latter part of February or first of March, 1945?

A. Prop maker.

Q. Is that T-3, prop and miniature journeyman, \$1.80?      A. That's right.

Q. Now, isn't that the classification in which you were working on March 10, 1945?

A. There is some discrepancy there. I have a check right here and the rate was \$1.71.

Q. Does this check you have show the rate on it, Mr. Bonning?      A. My discharge slip shows it.

Q. Well then, on March 14, 1945, March 15th



(Testimony of Robert W. Bonning.)

and so on up until the 19th, you were working as a prop and miniature journeyman, is that right?

A. That's right.

Q. And your rate instead of being \$1.80 was \$1.71, is that right?

A. That's right. That may have been retro-active. We might [404] have got that 9 cent raise there later. I don't remember now.

\* \* \*

Q. On March 19th in the meeting at the mill addressed by Mr. Brewer, what did Mr. Brewer say with respect to doing carpenter work or crossing jurisdictional lines?

A. He said that we would be required to do anything the studio asked us to do.

Q. Specifically, did he mention carpenter work?

A. That I don't remember.

Q. At the meeting on the same day in the prop shop addressed by Mr. Fuhrmann, what did he tell you about that same subject?

A. He asked us all to go into the mill and wanted to know who would go into the mill.

Q. And were you one of those that declined?

A. I was. [406]

\* \* \*

JOSEPH P. CUCCIA

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Rissman:

Q. Will you state your name, please?

A. My name is Joseph P. Cuccia, C-u-c-c-i-a.

Q. Mr. Cuccia, did you work at any motion picture studio before the strike of March, 1945?

A. Yes, I worked at Paramount when I started to work in the studios in the first part of 1942.

Q. How long did you work at Paramount? [417]

A. I worked from the first part of March until the 6th or 7th of June of 1942, when I went into Columbia Pictures.

Q. And from June, 1942, how long did you work at Columbia?

A. I worked until August 31st, when I was inducted into the United States Army.

Q. August 31, 1942? A. 1942, yes, sir.

Q. And how long were you in the Army?

A. I was in from August 31, 1942, and I was honorable discharged the 31st of April, 1943, a medical discharge.

Q. Now, after your honorable discharge from the United States Army, did you return to work at Columbia? A. Yes, sir, I did.

Q. When did you go back there?

(Testimony of Joseph P. Cuccia.)

A. In the first part of May—1st, 2nd or 3rd, somewhere around in there.

Q. 1943?           A. 1943.

Q. What kind of job did you have at Columbia before you went into the Army?

A. I was a laborer, which was more or less—we stood by with companies and swept the stages and when the grips struck the sets we would load them on the trucks and send them out to the ranch where they stored all their sets.

Q. When you say “when the grips struck the sets,” you are [418] referring now to taking the sets apart?

A. Yes, dismantling them, the walls, and loading them on the dollies—what we call dollies.

Q. You are not referring to the type of strike which results in a stoppage of work?

A. No, sir.

Q. When you returned from the Army, what kind of work were you given at Columbia?

A. The same thing, just stand by with the companies and when the companies weren't shooting, we would kind of clean up around there.

Q. Now, who was your superior and who was your boss after you returned from the Army?

A. Tom Stevens.

Q. How long did you work under Tom Stevens?

A. Until the date that I was terminated.

Q. And when was that?

A. April 3rd at 10:00 o'clock in the morning, 1945.

(Testimony of Joseph P. Cuccia.)

Q. Did you have any other boss other than Tom Stevens?

A. Well, we had a pusher by the name of Vern Woodland. He was nothing but—just like a straw boss.

Q. Were you a member of any labor organization while you were working at Columbia?

A. Local 727.

Q. Of the I.A.T.S.E.? [419]

A. I.A.T.S.E., yes, sir.

Q. Who is Al Erickson?

A. He is our business representative of Local 727.

Q. Now you say you were discharged on April 3, 1945?

A. Yes, sir.

Q. On that day did you attend any meeting of employees at your studio which was addressed by Mr. Erickson and in the presence of the foreman?

A. No, it wasn't that day. It was a week previous—a week or eight days previous to that, it was—previous to April the 3rd. We had a meeting on Stage 4.

Q. Who was present on Stage 4?

A. Most of the 727 boys, which I think, roughly guessing, there were about 10 or 15 boys, Al Erickson, his body guard, and Tom Stevens.

Q. How did you happen to be on Stage 4 at that time?

A. I was called down from Stage 1 to Stage 4 by telephone.

Q. Who called you?

(Testimony of Joseph P. Cuccia.)

A. I don't remember if it was Tom Stevens or if it was Vern Woodland, one of the two.

Q. They called you from where you were working and asked you to come to Stage 4?

A. Yes, sir, Stage 4. [420]

Q. Didn't they tell you why you had to be there?

A. They said our business representative wanted to talk to us.

Q. When you got to Stage 4 was Tom Stevens there? A. Yes, he was.

Q. And was he there all the time that you were there? A. Yes, sir, he was.

Q. What was said when you got there and by whom?

A. Well, Erickson got up and said that we had to go into the paint shop, and at that time they wanted us to wash buckets, which we never did do before, but he said one of the boys had to go in and do it, so the boys took a vote in there and the answer was no, they would not go into the paint shop. He said that was the orders he received or else we would be terminated. So then the meeting didn't last very long. He got mad when he heard the answer was no, and he opened the door and walked out.

Q. Who was that, Erickson?

A. Erickson, yes.

Q. Did Stevens say anything at that meeting?

A. No, he didn't. He just stood there and listened.



(Testimony of Joseph P. Cuccia.)

Q. You say this was about a week or eight days before your discharge? A. Yes, sir.

Q. After that meeting and until the time of your discharge [421] what kind of work did you do?

A. I was on Stage 1 with a company, just standing by every day, answering the telephone and opening and closing the door.

Q. Doing the work that you had been doing before the strike? A. Yes.

Q. Your regular work?

A. My regular work.

Q. During that period or at any time before that up until the date of your discharge did anyone ever ask you to work in the paint shop?

A. No, sir, they did not.

Q. Did you ever work in the paint shop?

A. No, sir, I did not.

Q. Were you working on April 3rd in the morning?

A. I was working on Stage 1, yes, with a company.

Q. And what occurred at that time?

A. At about 10:00 o'clock I got a call from Vern Woodland to report to Dave Vail to go painting.

Q. Who is Dave Vail?

A. At the time he was the special effects boss.

Q. Is that V-a-i-l?

A. V-a-i-l or V-e-i-l, I don't remember which. I don't remember how you spell his name.

Q. Did you say anything to Woodland?

(Testimony of Joseph P. Cuccia.)

A. I says, "Oh, no," and I hung up, and I says, "I'll come down to the office."

Q. Did you go down to the office?

A. Yes, I did.

Q. With whom did you talk there?

A. Well, outside I told Woodland I wasn't able to paint and he just shrugged his shoulders as if to say, "What you telling me about it for?"

Q. Did you tell him why you weren't able to paint?

A. He didn't give me a chance. He just shrugged his shoulders. Then I walked into the office and Tom Stevens had my availability slip and card ready and told me to punch it out and that was it.

Q. Did you have any conversation with Stevens?

A. No, I didn't.

Q. Did you get any kind of a discharge slip?

A. Yes, I got a yellow one which is an availability slip.

Q. Is that the slip which is addressed to the War Manpower Commission?      A. Yes, sir.

Q. Did you get any other kind of a slip from the company?

A. No, I did not. They wouldn't give me any other kind.

Q. Did you ever have any conversation with Tom Stevens about the nature of your disability which resulted in your honorable discharge from the Army?

A. Yes, upon my return the first day—the first

(Testimony of Joseph P. Cuccia.)

day I returned after I was discharged, I was by the hoist on the lot and he asked me what was the matter and I told him that I was practically blind in my left eye and I had sinus very bad, and that was about all, and he says, "Aw, you'll be all right."

Q. Did you ever have any conversation with Mr. Stevens or Mr. Vail as to why you didn't want to go into the paint shop?      A. No, I did not.

Q. Did you have any reason for not wanting to go into the paint shop?

A. Yes, due to physical disabilities for one, and second, I couldn't see myself as being used as a strike breaker.

Q. Did you ever have any conversation with Erickson about getting your job back at Columbia?

A. I did, the following afternoon after I was terminated. I had gone to my local draft board and told them I had been discharged from work and he asked me why and I says because I didn't want to be used as a strike breaker and he says, "I don't blame you." So he called up the local and talked to Mr. Brown which is our secretary of the local. When I got in there I got the third degree from him.

Q. Tell us what happened?

Mr. Mitchell: I object to that as immaterial so far as the respondents are concerned.

Trial Examiner Riemer: Sustained.

Mr. Mitchell: I move the statement that he got

(Testimony of Joseph P. Cuccia.)

the third degree from Brown be stricken out for the same reasons.

Trial Examiner Riemer: The motion to strike that statement is granted.

Q. (By Mr. Rissman): Did anyone call Columbia Studios on your behalf and try to get you your job back?

Mr. Mitchell: Wait a minute. I object to that on the ground it calls for a conclusion, that kind of a question. Apparently this witness is being asked to testify about something somebody else did without any foundation being laid to show that he was there.

Mr. Rissman: I am trying to lay the foundation.

Mr. Mitchell: Well, that gets an answer to the question before the foundation is laid.

Trial Examiner Riemer: Sustained.

Q. (By Mr. Rissman): Who is Mr. Brown?

A. He is the secretary of our local.

Q. Did you have any conversation with Brown about getting your job back at Columbia?

A. No, I didn't. He told me I had to wait and talk to Mr. Erickson.

Q. Did you have a conversation with Erickson about getting your job back? A. Yes, I did.

Q. Approximately when was that? [425]

A. In the afternoon after I had been terminated.

Q. The same day? A. The same day.

Q. Where did the conversation take place?

A. In Local 727 which is on Lillian Way, just a block from Santa Monica Boulevard.

(Testimony of Joseph P. Cuccia.)

Q. In the office of 727, I.A.T.S.E.?

A. Yes, sir.

Q. Who is Mr. Guild?

A. He was the labor conciliator of Columbia Pictures at the time. I understand he was fired.

Q. Now, while you were with Mr. Erickson did he have any conversation with Mr. Guild?

A. Yes, he spoke to him over the telephone. He said he had a fellow "here" that was a veteran and the Veterans Bureau had been stepping all over him for firing veterans and Giles in return said he didn't have to hold a veteran over a year, he could kick them out if he wanted to.

Q. Did you go back to Columbia Studios at any time after April 3rd?

A. I believe it was on the 5th I went after my check.

Q. Who did you see?

A. I saw Mr. Stevens over there and didn't say much.

Q. Did you see or talk with anyone else representing the company? [426]

A. No. After I got my check I went into the time office to get an availability slip stating why I was terminated and they wouldn't give it to me, and that was all.

Q. Whom did you ask?

A. Some blonde young lady in there. I don't know who she was.

Q. One of the office girls?

A. One of the office girls.



(Testimony of Joseph P. Cuccia.)

Q. Are you still in good standing in Local 727?

A. Yes, I am.

Q. Have you always been a member in good standing ever since you first joined that local?

A. Yes, I have.

Q. Did you ever receive any request from Columbia Studios since April 3rd, 1945, to return to work?

A. No, I haven't.

Q. Have you been ready and willing and able to go back to work at your former job?

A. Yes, I have.

Q. Are you now willing to go back there to your old job?

A. Yes, I am.

Mr. Rissman: That's all.

#### Cross-Examination

By Mr. Mitchell:

Q. Did you ever make application to go back to your old job?

A. Yes, I talked to Mr. Stevens. [427]

Q. When?

A. I believe it was some time in November of 1945, right after the strike. It might be the first part of December. I don't remember the exact date.

Q. Who else was there?

A. I don't remember if I was alone or I had some fellow with me. I think I might have been alone.

Q. What did you say to him?

A. I asked him if I could come back and he

(Testimony of Joseph P. Cuccia.)

says it was out of his hands and he didn't know what to say or what to do for me.

Q. Was that the last conversation you had with him?

A. No, I went back again in June, I think it was. I went back and asked him for my job again and he said it was out of his hands and he would go up before the front office and see what he could do and would call me up. I didn't wait for his call. I called him back and he didn't know what to say or do, it was just completely out of his hands.

Q. Did you get an availability certificate in April, 1945, or didn't you?      A. Yes, I did.

\* \* \*

Q. (By Mr. Mitchell): Let's get this clear. On April 3rd—just answer my questions now—we start in in the morning. You came to work at what time?      A. 6:00 o'clock in the morning.

Q. And where did you report?

A. Right on Stage 1.

Q. And what did you do commencing at 6:00 o'clock?

A. I cleaned up the stage and got it ready for the company to come in and to shoot.

Q. Under whoes direction were you working?

A. Under Vern Woodland.

Q. All right, now, what did you do next after you got Stage 1 cleaned up ready for shooting?

A. The company come in and we closed the door and they started rehearsing, and at 10:00

(Testimony of Joseph P. Cuccia.)

o'clock in the morning I got a call from Vern Woodland to report to Dave Vail and go painting.

Q. Just a minute, was this call over the telephone?      A. Yes, sir. [430]

Q. Just as near as you can remember, what did Mr. Woodland say to you?

A. "This is Joe?" I said, "Yes." He said, "Report to Dave Vail and start painting."

Q. What did you say?

A. I said no, that I would not come, and I hung up, and he said, "Be down at the office."

Q. Before you hung up you told him you would be down to the office?      A. That is right.

Q. Was he down to the office?

A. He was outside.

Q. What office are you talking about?

A. The labor shack, the labor office.

Q. All right. Did you then go down to the office?      A. Yes, I did. I walked in.

Q. And who was there?

A. Tom Stevens and his secretary, and that is about all that was inside there.

Q. Was Mr. Woodland there?

A. No, he was outside.

Q. Who did you speak to, if anybody?

A. I spoke to Woodland outside. I says, "I can't paint," and he just shrugged his shoulders as if to say, "There is nothing I can do for you." And then he says, "You had better go in the office."

Q. All right. Who did you see when you went in the office? A. I saw Tom Stevens there.

Q. Did you have any discussion with him at all?

A. No, I didn't. He just said, "Here is your time card, this is it."

Q. And he gave you a time card?

A. Yes, my regular morning card to go punch out.

Q. Did he give you anything else?

A. He gave me a little yellow availability slip.

\* \* \*

Q. (By Mr. Mitchell): All right. Now, you say you got a yellow availability ticket on April 3, 1945, given to you by Mr. Stevens?

A. Yes, sir.

Q. Then what did you do?

A. Punched in my card, and left the lot and went on home. [434]

\* \* \*

Q. All right. After the strike did you work anywhere? A. No, I did not.

Q. Did you try to work anywhere?

A. No, I did not.

Q. Are you working now?

A. I am living on my \$20.00 a week right now.

Q. And has that been so ever since the end of the strike? A. No, it just started.

Q. Well, let us start at the end of the strike. Did you work anywhere after the end of the strike?

A. No. I was still in the trucking business at the end of the strike.

(Testimony of Joseph P. Cuccia.)

Q. All right. How long did you remain in the trucking business?

A. I think the latter part of February.

Q. 1946? A. 1946.

Q. All right. Then did you work anywhere after the latter part of February, 1946?

A. No, I didn't then.

Q. Did you try to get work anywhere?

A. I have been trying to go back to Columbia, yes.

Q. Did you try to get work anywhere else?

A. No, I didn't. [442]

\* \* \*

### Redirect Examination

By Mr. Rissman:

Q. Were you ever asked to clean paint pots in April, 1945? A. I was not.

Q. Prior to the strike, by what employees were paint pots cleaned?

A. Prior to the strike, to my knowledge, they had an old man in there that was serving as an apprentice, but I believe he belonged to the Local 724, and they always done that work. They never let 727 boys anywhere near the paint shop.

Q. This Local No. 724, what is that?

A. They are another labor organization. They have got two labor organizations at the studios.

Mr. Luddy: Not affiliated with I.A.T.S.E.?

The Witness: No, sir. [445]

\* \* \*



CARL H. GIDLUND

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Rissman:

Q. Will you state your name, please?

A. Carl H. Gidlund.

Q. Were you employed at Warner Bros., Mr. Gidlund?

A. I was.

Q. When were you employed there?

A. I started working for Warner Bros. in November of 1929.

Q. And in what capacity?

A. In the sheet metal shop as a sheet metal worker.

Q. How long did you work in the sheet metal shop?

A. Well, I wouldn't say continuously but during slow spells I was laid off, but from 1929 until 1943, I believe, when I was transferred to the prop shop.

Q. During the time that you worked in the sheet metal shop up until 1943, were you a member of any labor organization?

A. Yes, I carried an International Alliance 37 card and when that was dissolved I became a member of I.A. Local 44.

Q. At the time you worked in the studios were

(Testimony of Carl H. Gidlund.)

you ever a member of any organization other than the I.A.T.S.E.?      A. Never.

Q. How long did you continue to work for Warner Bros?

A. Until my service was terminated at the beginning of the strike.

Q. Do you recall the date on which your services were terminated?

A. I believe it was March the 19th. I have the discharge slip.

Q. You have a blue slip there?

A. Yes, I have a blue slip.

Q. And what is the date on the blue slip?

A. March 19th, 1945.

Q. Referring to the blue slip, what is typewritten after the word "occupation"?

A. "Prop maker."

Q. And after "department"?

A. "Technical."

Q. What is your rate, as indicated on that slip?

A. The rate as indicated on the slip was \$1.71.

Q. And what is typewritten after the printed word "remarks"?

A. "Refused to do carpenter work."

Q. By whom is the blue slip signed? [448]

A. F. C. Fuhrmann.

Mr. Rissman: Mr. Mitchell, do you want to examine the blue slip? He has been reading from it.

Mr. Mitchell: That is all right.

Q. (By Mr. Rissman): After you were trans-

(Testimony of Carl H. Gidlund.)

ferred into the prop shop, what kind of work did you do there?      A. Sheet metal work.

Q. Can you describe some of the work you did in the prop shop?

A. At the time I transferred in there, the prop shop had just started to build a bomber, and when I went in there Mr. Gibbons called me in the office and said he was turning all the sheet metal work on the bomber over to me, and I would have charge of it and take the work out to the sheet metal shop and supervise the construction and the installation of all the sheet metal work in the bomber. And along with that there were other sheet metal jobs. At the time of my termination we were working on a mechanical horse. I handled all the metal work, or a lot of metal work on that, and different metal work on sets.

Q. Do you have your own tools that you use while working in the studio?

A. I own sheet metal tools, yes.

Q. Do you have any other type of tools?

A. Referring to carpenter tools, I have never carried any carpenter tools in my box in all the years I have worked at the studio. [449]

Q. Did you ever work in the carpenter shop as a carpenter?      A. I never did.

Q. Or in the mill?      A. I never did.

Q. Under whose supervision did you work while you were working in the prop shop?

A. Under Gus White.

Q. Prior to the strike of March, 1945, did you

(Testimony of Carl H. Gidlund.)

ever refuse to do any work that was assigned to you?      A. No, none; not at all, never.

Q. Were you ever asked to go to work in the carpenter shop?      A. Prior to the strike, no.

Q. Prior to the strike were you ever asked to do any type of carpenter work?

A. No, I was not.

Q. From 1943 until the time of your discharge on March 19, 1945, were you ever laid off?

A. No.

Q. Did you work on March 12, 1945, the day on which the strike started?      A. No, I did not.

Q. When did you go to work after that?

A. I believe it was on Wednesday following the call of the strike. [450]

Q. That would be March 14?

A. I believe that was it, yes.

Q. When you went back to work on March 14, what kind of work did you do?

A. Metal work.

\* \* \*

Q. Did Mr. Fuhrmann come in?

A. He did.

Q. What did he say?

A. He asked us if we were willing to go in and do carpenter work and we refused.

Q. Why did you refuse?

A. Well, there were several reasons. My reason—one of my reasons was that I had never done carpenter work and never, as I said before, never carried any carpenter tools. I had done nothing

(Testimony of Carl H. Gidlund.)

but sheet metal work and other prop making work in the studios, and another reason was that I didn't want to be a strike breaker or a scab. [455]

\* \* \*

Q. Did Mr. Fuhrmann say anything to you when you told him you would not do carpenter work?

A. Yes, he said, "Well, I'm sorry, boys. That's it." And turned around and walked out.

Q. Did you leave the studio then on that day?

A. Yes, I did.

Q. Did you ever come back to the studio after that?

A. Yes, I went in to get my tools.

Q. When did you go in for your tools?

A. We had a meeting at Mr. Peck's house and I believe it was the morning after that I went in to get my tools.

Q. Did you attend any meeting at the studios on the night or evening of March 19th?

A. I did.

Q. Was Mr. Fuhrmann present at that meeting?

A. Yes, he was.

Q. What occurred at that meeting in the evening?

A. Well, mainly Mr. Fuhrmann or Mr. DuVal was telling the boys that they would have to go in and do anything and everything that the International wanted us to do to keep the studio going and the discussion became pretty heated and some of the boys in discussing with Mr. DuVal asked what would [456] happen if they refused and at one time he said that if we refused to do the things



(Testimony of Carl H. Gidlund.)

that we were asked to do that our cards would be taken away from us and that we would never work in the motion picture industry again. [457]

\* \* \*

Q. Did you ever go back to work at Warner Bros. after March 19th? A. No, I never did.

Q. Did you ever try to get your job there again?

A. Yes, I did.

Q. When?

A. At the end of the strike I called Mr. Gibbons' office in the prop shop and he was out and I talked to Mr. Peck who I understood was in charge of the department under Mr. Gibbons [458] at the time and he said things were just the same as they were before, that we would have to wait for a call. And I also called Mr. Fuhrmann's office and got the same story from there, that I'd just have to wait for a call. [459]

\* \* \*

Q. (By Mr. Rissmann): Were you in good standing in the I.A.T.S.E. in October and November of 1945? A. I was.

Q. And on March 19th, 1945? A. I was.

Q. After March 19th, 1945, were you ready and willing to go back to your prop making job at Warner Bros.? A. Yes, sir.

Q. Are you still willing to go back to that job?

A. I am.

Mr. Rissmann: That's all.

Trial Examiner Riemer: Mr. Mitchell?

(Testimony of Carl H. Gidlund.)

Cross-Examination

By Mr. Mitchell:

Q. Have you been working since October 31, 1945?

A. October 31—yes, I have been. I have been working fairly steady.

Q. You have been working fairly steady?

A. Yes.

Q. At studios other than this Eagle-Lyons Studio?

A. Eagle-Lyons Studio wasn't in existence at that time, I [460] don't think. It was a P.R.C. studio and an independent studio was operating on the P.R.C. lot and I worked there for a time.

Q. Did you work during the period of the strike? A. I did for a short time, yes.

Q. In some studio? A. Yes.

Q. Which one? A. Monogram Studio.

Q. And then since the end of the strike you have been working, you say, fairly steadily in studios?

A. That's right.

Q. In sheet metal work of some sort?

A. Metal work only.

Q. What kind of a card do you hold to work?

A. At the present time?

Q. Yes.

A. I don't hold a card. I have been working on a permit.

Q. From what union?

A. I.B.E.W., International Brotherhood of Electrical Workers, Local 40.

(Testimony of Carl H. Gidlund.)

Q. That is, under the I.B.E.W. you have been working since the end of the strike?

A. That's right—not all the time, just since my card was taken away in the I.A. [461]

Q. Well then, prior to that time, were you working under your I.A. card?      A. That's right.

Q. In prop shops?

A. In special effects and prop shops, yes.

Q. In those other studios you spoke of?

A. That's right.

Q. How did you get your jobs in those other studios under your I.A. card?

A. By the different fellows I had worked with at Warner Bros. calling me.

Q. Did you sign any I.A. Local 44 call book?

A. I did not, I never have.

Q. Were you present at the meeting on March 13th, 1945, across the street from the studio when Mr. DuVal read a telegram from Richard Walsh dated March 12th, 1945, directing I.A.T.S.E. men to cross picket lines?      A. Yes, I was.

Q. Showing you Respondents' Exhibit No. 3, did you see that or a copy of it at or about March 13th, 1945?

A. Yes, I believe I have seen it before on or around that time. [462]

\* \* \*

Q. Did you attend the meeting at the Women's Club on March 18, 1945?      A. I did.

Q. What did Mr. Richard Walsh say with respect to crossing jurisdictional lines or doing carpenter work?

(Testimony of Carl H. Gidlund.)

A. I don't recall that he said anything about doing carpentry work. He didn't specify, I don't think, carpenter work. I think he said that the I.A. men would have to go in and do anything and everything that was in their power to keep the studios in operation.

Q. And to do whatever work the studios assigned to them? A. That's right.

Q. That is what he told you?

A. Well, I wouldn't say to do whatever work the studio assigned to us or whether the business agent or the union was telling us to do it.

Q. Were you present at the meeting in the mill at Warner Bros. on March 19th when Mr. Brewer talked to you about doing work other than prop makers' work? A. I was.

Q. What did he say about it?

A. Well, it was about the same thing, that the International, the I.A. was insisting that the men go in and do carpenter work, painting, and anything and everything to keep the studios in operation. [463]

\* \* \*

Q. You were, however, present in the evening at 6:30 on the 19th when Mr. DuVal and Mr. Fuhrmann was there? A. I was there, yes.

Q. Was anything said about withdrawing or tearing up the blue slips if you men would go back to work?

A. I believe there was something mentioned about the blue slips, that the blue slips would be

(Testimony of Carl H. Gidlund.)

void if the men would go in and do the work.

Q. And by that, what work?

A. Do carpenter work, as they had asked us to do, what we had been discharged for. [464]

\* \* \*

Q. During the period of the strike were you ready and willing to go back to Warner Bros. and do carpenter work if directed by Warner Bros.?

A. Not do carpenter work, no, because I had never done carpenter work. I had never carried carpenter's tools. [465]

Q. Well, regardless of the reason were you willing to go back and do carpenter work if somebody would furnish you a hammer to work with?

A. I was willing to go back and do prop making work only, and not as a carpenter. [466]

\* \* \*

### DONALD MacKELLAR

called as a witness by and on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Rissman:

Q. Will you state your name, please?

A. Donald MacKellar.

Q. Prior to the strike of 1945, were you employed at Warner Bros.?      A. I was.

Q. How long did you work there?

A. About seven months.



(Testimony of Donald MacKellar.)

Q. And what kind of work did you do?

A. Prop work.

Trial Examiner Riemer: I can't hear you, Mr. MacKellar.

The Witness: Prop work.

Q. (By Mr. Rissman): Under whom did you work?

A. Directly under James Gibbons, Mr. White, and Mr. Sapp.

Q. What kind of work did you do under those people?

A. Well, most of my time was doing plastic work, making plastic cups and saucers for Jack Benny pictures.

Q. Are you referring to the large cup that was used in that picture?

A. Yes. We made a large one, we made a small one,—we made three different sizes. [524]

Q. What size were they?

A. The smallest one was probably about, oh, seven inches.

Q. And the largest?

A. The next was probably about two feet, and then the great big cup that Mr. Sapp spoke about was big enough to drown a man in.

Q. And that was made of a plastic material?

A. Plastic, yes. [525]

Q. How long have you been in the motion picture industry?

A. Oh, I started when they made the first Hunchback of Notre Dame at Universal. That must have been 22 or 23 years ago.

(Testimony of Donald MacKellar.)

Q. Have you always been a prop maker?

A. Yes, I started in making props.

Q. Have you specialized in any particular kind of props?      A. No. They all come as props.

Q. Have you worked on miniatures?

A. Oh, yes.

Q. As well as big ones?      A. Oh, yes.

Q. Have you done more work on miniatures than other types?

A. I have dressed many miniature sets.

Q. When you were working at Warner Bros. before the strike, were you a member of any labor organization?

A. I was a member of the I.A.T.S.E.

Q. Which local?      A. 44.

Q. How long have you been a member of Local 44?      A. Since it started. [526]

\* \* \*

Q. Did you work on March 12 and 13, 1945, the first two days of the strike?

A. The first two days of the strike? No, I didn't.

Q. Did you come to work on March 14th?

A. Yes.

Q. And how long did you continue working after that?

A. Until they fired me on the 19th.

Q. Did you get a blue slip?

A. Yes. I have it here.

Q. Will you refer to it, please? What is the date on your [527] blue slip?      A. 3/19/45.

(Testimony of Donald MacKellar.)

Q. And what does it state as your occupation?

A. Prop maker.

Q. In what department?                      A. Technical.

Q. What is typewritten after the printed word  
"Remarks"?

A. "Refused to do carpenter work."

Q. By whom is the blue slip signed?

A. Mr. Fuhrmann.

Mr. Rissman: Mr. Mitchell, do you want to see  
the blue slip from which the witness has been read-  
ing?

Mr. Mitchell: No.

The Witness: I guess you have seen plenty of  
them.

Mr. Mitchell: What is the rate of pay?

The Witness: \$1.95.

Mr. Mitchell: No, I don't want to look at it.

Mr. Rissman: Thank you.

Q. (By Mr. Rissman): When did you get that  
blue slip?

A. On the 19th, the end of the shift.

Q. On March 19, 1945, did you attend a meeting  
that was addressed by Mr. Roy Brewer in the  
studio?                      A. I did.

Q. And did you attend the meeting that was  
addressed by Mr. Fuhrmann on that day? [528]

A. I did. [529]

\* \* \*

Q. (By Mr. Rissman): Did you work after  
March 19, 1945, at the Warner Bros. Studios?

A. No, not until two or three weeks ago.

(Testimony of Donald MacKellar.)

Q. Well, did you work at any time during the strike?      A. No. Oh, no.

Q. After the strike did you try to get your job back?

A. I did. I called up Mr. Gibbons, and he said he wasn't hiring or firing, I would have to see Mr. Fuhrmann.

Q. Did you see Mr. Fuhrmann?

A. No. I tried, and he was always out. I tried about six times, and I couldn't get hold of him, and I quit trying.

Q. Did you ever go back to Warner Bros.?

A. Yes, I did, about—let's see, I have been away from there now about three weeks. I was there for about a month.

Q. In other words, you went back and worked there about seven weeks ago?      A. Yes.

Q. That would be some time after the first of August?      A. In around there.

Q. And how did you get your job at that time?

A. Through the union.

Q. Are you still a member in good standing of the union?      A. Yes.

Q. What kind of work did you do when you went back there?      A. Prop work. [530]

Q. Are you working there now?      A. No.

Q. How long have you been out?

A. From there?

Q. Yes.      A. About three weeks.

Q. And what was the reason you are not working there now?

(Testimony of Donald MacKellar.)

A. Well, when we thought there was a strike going to come along, Jimmie Gibbons called all of the boys up to the penthouse, but I was told I wasn't wanted there, so I went into Jimmie's office and asked Jimmie, "What is wrong, why am I not wanted up there?"

He said, "Well, you are not one of us, Don. Go back to the end of the shop and sharpen your tools or anything you want."

And I said, "Well, Jimmie, if I am one of the boys that is not wanted, I will take my tools and go, because I can't work under those conditions."

So I packed my tools and went.

Mr. Rissman: That's all.

### Cross-Examination

By Mr. Mitchell:

Q. When was it you left Warner Bros. last?

A. Last, just about a few weeks ago.

Q. You weren't discharged? [531] A. No.

Q. You weren't laid off? A. No.

\* \* \*

Q. After the strike, after talking with Mr. Gibbons, did [532] you attempt to get a job anywhere else?

A. I went to the union and the union gave me a job.

Q. The union gave you a job? A. Yes.

Q. When did the union give you your first job?



(Testimony of Donald MacKellar.)

A. Oh, about three months after the strike, something like that.

Q. Three months after the end of the strike?

A. Yes.

Q. Well, when did you first go to the union to get a job?

A. Just about that time because I wasn't bothering about—I was still busy with my own house and wasn't bothering much.

Q. Well, you didn't bother about getting a job for three months after the strike, is that it?

A. Oh, I guess I went down to the union. I just didn't get a job, that was all. That was all right and I went back home and kept working on my house. Finally I went down there one day and I said, "Can I go to work now and work in the studio?"

"Yes, you can go back to work in the studio," and I got a job.

Q. During this three months' period you say you were working on your house?

A. Yes, I was redoing it.

Q. Doing some building work on it, you mean?

A. No, some stucco work on it and fixing up my shingles and stuff like that.

Q. When was the first time that you signed the union call book after the strike?

A. Well, to tell you the truth I haven't signed it yet. I just asked them over the telephone when I got the job.

Q. When was the first time that you asked them over the telephone to put you on a job?

(Testimony of Donald MacKellar.)

A. I can't remember the dates at all. That is one thing I am very, very bad at doing, remembering dates.

Q. Who did you talk to?

A. I talked to the call boy.

Q. Was it one month, two months, three months after the end of the strike?

A. Well, I guess I asked them around the first month but then you know, feelings were still a little bit high and that was that.

Q. Where did you go for your first job after the end of the strike?

A. Columbia.

Q. And have you worked there since that time?

A. I worked for Columbia Studios seven months. That is all I have worked for Columbia.

Q. Seven months?

A. Yes. [534]

Q. Then did you take another job?

A. That was the time I got the job at Warner, after I worked at Columbia.

Q. After you got through at Columbia, you went over to Warners and worked there?

A. Yes, for about four weeks, something like that.

Q. And then you quit Warners?

A. Then I quit at Warners.

Q. Are you working now?

A. I am working at Monogram.

Q. Have you been working at Monogram since you quit Warners?

A. I am still working there.

Q. In the prop making department?

(Testimony of Donald MacKellar.)

A. Prop making department. [535]

\* \* \*

Cross-Examination

By Mr. Luddy:

\* \* \*

Q. Were you at any meeting at all of any prop makers that Mr. Brewer or Mr. DuVal spoke at?

A. Yes, I was at the meeting in the mill that morning.

Q. You heard Mr. Brewer state that Mr. Walsh had ordered the men to go through jurisdictional lines and do any work they were capable of doing?

A. Yes. [536]

\* \* \*

Recross-Examination

By Mr. Mitchell:

Q. Would you have been willing between March 19, 1945, and October 31, 1945, to come back to Warner Bros. as an employee and do carpenter work as directed? A. No. [539]

\* \* \*

GEORGE I. GROTH

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Rissman:

Q. Would you state your name, please?

(Testimony of George I. Groth.)

A. George I. Groth.

Q. Where do you live, Mr. Groth?

A. Hollywood district, Hudson Avenue, 809½  
North Hudson, Zone 38.

Q. Were you employed by Loew's, Incorporated,  
at any time?           A. Yes.

Q. When did you work there?

A. From January 29, 1942, through March 22,  
1945.

Q. And in what capacity were you employed?

A. Labor gang, labor.

Q. Who was your immediate superior when you  
were working on the labor gang?

A. Herbert Schuetze.

Q. What is his title or his job?

A. Superintendent of—he is just the supreme  
gang boss of all laborers on the lot. I just don't  
know what title he [545] does have.

Q. Were you a member of any labor organiza-  
tion during the time you worked at Loew's?

A. Yes.

Q. What?           A. Local 727, I.A.T.S.E.

Q. How long were you a member of that local?

A. December 12, 1942. I worked on a permit  
for six months.

Q. And then you became a regular member?

A. Regular member.

Q. Were you ever a member of any other labor  
organization while working in the studios?

A. No.

(Testimony of George I. Groth.)

Q. Did you go to work on March 12, 1945, the first day that the strike began?

A. I drove out to the studio but I didn't go in.

Q. Did you go to work on the second day?

A. No.

Q. When was the first time after March 12 that you went to work?

A. Wednesday, March 14th.

Q. When was the last time that you worked at Loew's?      A. March 22nd.

Q. On March 22nd what kind of work were you doing in the morning? [546]

A. Laborer, cleaning catwalks.

Trial Examiner Riemer: Cleaning what?

The Witness: Catwalks, the runways high.

Q. (By Mr. Rissman): Were you asked to do any other work on that day?      A. Yes.

Q. By whom?

A. Leo, special effects foreman.

Q. Do you know his last name?

A. I don't know his last name.

Mr. Mitchell: What did he say his first name was?

Mr. Rissman: Leo.

Q. (By Mr. Rissman): Where was Leo working at the time?      A. Stage 19.

Q. Where were you working at cleaning these catwalks?      A. I had been on 23.

Q. How did you happen to get over to Stage 19 if you were working on 23?



(Testimony of George I. Groth.)

A. We were called over by a pusher.

Q. Which one?           A. Ted Busse.

Q. Is that B-u-s-s-e?

A. Ted Busse and Jim Fallon, there is two of them.

Q. What kind of work did Leo ask you to do?

A. Work that the painters had been doing. [547]

Q. What kind of work was it?

A. Well, more or less puttying up holes and cracks with a broad knife and a handful of putty.

Q. And did you do it?

A. Some, but I didn't use the broad knife. I just stuck them full with my fingers.

Mr. Rissman: May I have the answer read?

Trial Examiner Riemer: Will you read the answer?

(The answer was read.)

Q. (By Mr. Rissman): How long did you continue to do that work?

A. Oh, a very short time, less than 30 minutes I would say.

Q. While you were working there doing that work, did you have occasion to see your time card?

A. Yes, I seen it. I did.

Q. How and where?

A. I slipped out to the card rack where our cards were deposited.

Q. Yes, and did you look at your card?

A. I did.

Q. Was it different than it had been before?

(Testimony of George I. Groth.)

A. It had the blue stamp on it where the rate had been changed.

Q. From what to what?

A. From laborer work to painter's rate. [548]

Q. Did you go back to your regular work at any time after that?      A. I went to Stage 19.

Q. When?      A. Immediately.

Q. Did you have any conversation with anybody there?      A. No.

Q. What did you do on Stage 19?

A. I just stalled and took 20 minutes off to clean up, because it was 4:30, near 4:30.

Q. Did you come to work the next day?

A. Yes.

Q. Where did you go to work?

A. We were sent to do the same work.

Q. Who sent you?      A. Herb Schuetze.

Q. Did you have any conversation with him when he sent you to do that work?

A. No, I had none then.

Q. Did you go to do it?

A. I refused to paint.

Q. Did you tell Schuetze that?

A. Later.

Q. When he sent you to do the painting, what did you do?

A. I reported at the leather room for Stage 10, where they [549] were assembling everybody who were expected to paint.

Q. And did you go to paint?

(Testimony of George I. Groth.)

A. No, I didn't.

Q. Did you talk to anyone other than Herb Schuetze?

A. Well, not right at that time I didn't.

Q. Did anyone else refuse to paint?

A. There were three or four of us.

\* \* \*

Q. (By Mr. Rissman): Did you have any conversation with Schuetze on that day?

A. A short one, told him I just believed I would go home.

\* \* \*

Q. (By Mr. Rissman): Was it before or after you were asked to paint that you told Schuetze you thought you would go home?

A. It was after I refused to paint. [550]

\* \* \*

Q. (By Mr. Rissman): This is March 23rd that you are talking about, isn't it?

A. March 23rd.

Q. 1945? A. 1945.

Q. What time did you come to work that morning? A. Shortly before 8:00.

Q. Was your regular starting time 8:00 o'clock?

A. 8:00 o'clock.

Q. Where did you report to work?

A. In the labor room, labor office.

Q. Is that where you usually reported?

A. Yes.

(Testimony of George I. Groth.)

Q. And were you assigned to work any place that morning?

A. He called for—I was sent to the leather room near Stage 10.

Q. What is the ladder room? [551]

A. It is leather, l-e-a-t-h-e-r, leather goods.

Q. What is that room?

A. It is just a small leanto on Stage 10 before you go through the main door into Stage 10.

Q. Who sent you there?

A. Herb Schuetze.

Q. Did he send anybody else there with you?

A. Yes.

Q. How many other people?

A. My guess would be near 20.

Q. Did you go to the leather room?

A. Yes.

Q. When you got there, who else was there in addition to these other workers that were sent with you?

A. There was Jim Fallon.

Q. Who is Jim Fallon?

A. Just call him a pusher.

Q. Pusher? A. Pusher.

Q. Was there any other foreman or pusher or straw boss there?

A. Leo.

Q. Is that the same man you testified to before?

A. Yes.

Q. Were you asked to do any work when you got to that [552] leather room near Stage 10?

A. They were all—we were all handed brushes if we would take them.

(Testimony of George I. Groth.)

Q. What kind of brushes?

A. Paint brushes and painters' tools.

Q. By whom?           A. By Leo.

Q. Did you take yours?           A. No.

Q. Did Leo say anything to you or to the others in your presence when he handed you the brushes and painters' tools?

A. He just said, "If you don't want them, report to Schuetze."

Q. Did you take the brush?           A. No.

Q. Did you say anything to Leo?

A. I just said, "I will not paint."

Q. Did you tell him why you would not paint?

A. No.

Q. Did you report to Schuetze then?

A. I did.

Q. Where did you report to him?

A. In—well, it is his office. It is the construction department.

Q. When you got there, was anybody else there besides you [553] and Schuetze?

A. There were the usual office force.

Q. Did you have any conversation with Schuetze at that time?

A. Well, very brief, if any. I don't recall. I just handed him my card.

Q. Which card?

A. The time card we punch, the time card.

Q. Did he ask you anything?



(Testimony of George I. Groth.)

A. I think he said, "Do you want to work—or don't you want to work?"

Q. What did you say?

A. I says, "Yes, but I don't want to paint."

Q. Did he ask you why you didn't want to paint?

A. No.

Q. Did you tell him?                      A. No.

Q. What happened after you handed him the card and had that conversation with him?

A. Well, there were three or four of us started to leave by the south gate.

Q. Go ahead.

A. And the policeman sent us back to Gabourie's office, Fred Gabourie.

Q. Who is Fred Gabourie? [554]

A. I think his classification is superintendent of construction.

Mr. Rissman: Mr. Mitchell, is that G-a-b-o-u-r-i-e?

Mr. Mitchell: That is correct.

Q. (By Mr. Rissman): Did you go to see Fred Gabourie?                      A. Several of us—I did.

Q. Where did you see him?

A. In his office.

Q. Did you have any conversation with him?

A. There was a discussion.

Q. Tell us what was said.

A. In regards to painting, and we were told if we could not paint, that they were going to make pictures regardless, "if you can't paint, we can't pay you."

(Testimony of George I. Groth.)

Q. Did you say anything? A. No.

Q. Did you leave the studio then?

A. I did.

Q. Now, prior to the strike, before the strike of March 19, 1945, did you ever work with any of the painters at the studio?

A. No, not on the paint gang.

Q. Had you ever done any painting of any kind?

A. Never.

Q. Had you ever done any of this work of filling holes or [555] cracks with putty that you described?

A. No.

Q. Had you ever been asked to do any of that work before the strike? A. Never. [556]

\* \* \*

Q. Did you ever tell Herbert Schuetze or this formen, Leo, whose last name you don't remember, why you didn't want to paint?

A. I don't believe I told them why. I just told them I wouldn't. [557]

\* \* \*

Q. Before the end of the strike did you ask the union, your Local 727 of the I.A.T.S.E., to get you a job?

A. I didn't ask the union at that time. I telephoned the studio.

Q. During the strike or after the strike?

A. On November 3 following the strike.

Q. That is November 3, 1945? A. 1945.

Q. And with whom did you talk?

A. Herb Schuetze.

(Testimony of George I. Groth.)

Q. What conversation did you have with him on that day?

A. He asked me where I had been, and I says, "Why, I have been off."

He says, "As far as I am concerned, you are still off," and hung up. [561]

\* \* \*

Q. Did you ever get back to work at Loew's?

A. Never did.

Q. And are you still a paid-up member of Local 727? A. I am.

Q. As far as you know, you are in good standing?

A. As far as I know.

Q. Are you working now? A. I am.

Q. Where? A. Hal Roach.

Q. Hal Roach Studios?

A. Hal Roach Studios.

Q. And what kind of work are you doing there?

A. Labor.

Q. And are you working under a 727 card?

A. Under a 727 card.

Q. When did you start to work at the Hal Roach Studios? A. March 9, 1946.

Q. At the present time are you willing to go back to Loew's to your former job as a laborer?

A. Not unless I would have to. I like Hal Roach's much better. [564]

\* \* \*

Q. You say that you called Mr. Schuetze on November 3, 1945?

(Testimony of George I. Groth.)

A. Saturday morning, November 3.

Q. How do you fix that date?

A. Why, I marked it on my calendar.

Q. Just give me the conversation that you had with Mr. Schuetze over the telephone, starting at the beginning of it, [566] as nearly as you recollect.

Q. I said, "This is George Groth."

"Well, how are you? Where in hell have you been?"

"I have been off."

"Well, as far as I am concerned, you are still off."

And that was all. [567]

\* \* \*

Q. Did you know that during March, 1945, the I.A.T.S.E. was directing its members to do whatever work the studios required—

A. I surely did.

Q. —in order to keep open?

A. I surely did.

\* \* \*

### JOHN L. SELGRATH

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Rissman:

Q. Will you state your name, please?

A. John L. Selgrath.

Q. Mr. Selgrath, were you ever employed at

(Testimony of John L. Selgrath.)

Loew's, [569] Incorporated, or what is known as the M.G.M. Studios?

A. I have been on the payroll the last time since March, 1931.

Q. How long were you employed there altogether?      A. About twenty years.

Q. You say the last time since March, 1931. Were you off for any period before that?

A. Three days.

Q. What was that?      A. Three days.

Q. When was that?

A. That was in March, in 1931.

Q. And how long did you continue to work there after March, 1931?

A. Until March 23, 1945.

Q. Between March, 1931, and March 23, 1945, were you ever laid off?      A. No.

Q. Did you ever lose any time there for any reason in that period?

A. I was loaned out to another studio.

Q. When was that?      A. 1941, I believe.

Q. To what studio?      A. Selznick. [570]

Q. How long were you at Selznick's?

A. For two weeks.

Q. Then did you go back to M.G.M.?

A. Yes, sir.

Q. Did you ever work any place else in that period between March, 1931, and March, 1945?

A. No.

Q. What was your work at M.G.M. when you were last employed there?



(Testimony of John L. Selgrath.)

A. I was a key grip.

Trial Examiner Riemer: This is going to be a little confusing if you refer to Loew's——

Mr. Rissman: Loew's, Inc., is the correct corporate name of the respondent. It is known as the M.G.M. Studio. Is that correct, Mr. Mitchell?

Mr. Mitchell: That is true.

Mr. Rissman: The employees know it as M.G.M., but it is Loew's, Inc.

Trial Examiner Riemer: Go ahead.

Q. (By Mr. Rissman): What is the work of a key grip?

A. He is assigned to a cameraman, and we go out on production, and we supervise the moving of walls, setting up and using reflectors on the exterior sets, putting in tracks for the cameras to go along on the dolly.

Q. How long were you employed as a key grip?

A. From July, 1933.

Q. Until——

A. In 1933 we were assigned to companies as standby carpenters, and we were under a different union organization; and then in 1936 we were known as grips.

Q. After 1936 of what union were you a member?      A. Local 37.

Q. Of the I.A.T.S.E.?

A. That is right.

Q. How long did you continue to remain a member of Local 37?

A. Until we were assigned over to Local 80.

(Testimony of John L. Selgrath.)

Q. And when was that, approximately?

A. I couldn't say.

Q. Do you recall it as some time in about 1937?

Mr. Mitchell: 1939.

The Witness: 1939, I believe.

Q. (By Mr. Rissman): 1939? A. Yes.

Q. And you went automatically from one local, from one local to another? A. That is right.

Q. How long did you remain a member of Local 80?

A. I am still a member of Local 80.

Q. Still in good standing? [572]

A. Yes, sir.

Q. Still paid up? A. That is right.

Q. Who was your boss while you were working as a grip? A. Andy McDonald.

Q. What is his title? A. Grip foreman.

Q. Directing your attention to March 23, 1945, did you work on that day?

A. Yes. Yes, on the 23rd I worked.

Q. And what kind of work did you do on that day? A. I was on a standby with a company.

Q. That was your regular work?

A. Grip work, that is right.

Q. Were you asked to do any other work on that day? A. No, I was not.

Q. Well, were you ever asked to do any other work other than your regular work as a grip in March, 1945? A. Yes.

Q. When? A. The 24th.

(Testimony of John L. Selgrath.)

Q. Who asked you?

A. I was assigned to go to Stage 29 to do carpenter work.

Q. Who assigned you to that?

A. Mr. McDonald. [573]

Q. What did he say and what did you say?

A. I asked him what kind of work it was, and he told me it was carpenter work, so I told him I wouldn't do it. I asked him what I should do, and he told me to report to Mr. Barrett at Local 80.

Q. And is that William Barrett, the business representative of Local 80?

A. That is right.

Q. Did you tell Mr. McDonald why you wouldn't do carpenter work?

A. Yes, I think I told him the day before, when the argument started.

Q. And did you have any discussion with Mr. McDonald at any time before March 24 about doing work other than grip's work?

A. Just on the 23rd. [574]

Q. What conversation did you have with him on the 23rd and where was it?

Mr. Luddy: Now, if that question is asked for the purpose of eliciting from this witness the reason as to why he would not do carpenter work, I want to make an objection. If counsel assures me it is not what he has in mind, then I won't encumber the record with the objection now.

Trial Examiner Riemer: Why don't you wait

(Testimony of John L. Selgrath.)

until the exact question is presented, then you will be ready to make your objection, Mr. Luddy. I don't know what the purpose of the question is. Do you have the question? What is it?

(The question was read.)

Trial Examiner Riemer: Go ahead, Mr. Rissman.

The Witness: Answer?

Trial Examiner Riemer: Yes.

The Witness: I went to work on the 23rd of March and there were four boys standing there who used to be my assistants, second men, so they were telling me that they would not do any carpenter work, because the previous day there were some men there who refused to do it and they went out and they were assigned to take those men's jobs that day, and there was one of them then was a second man on another outfit, so I waited until Andy came and asked him about it.

Q. (By Mr. Rissman): By Andy you mean Andy MacDonald?      A. Yes. [575]

Q. All right.

A. And I said, "Andy, how does it come that these men have been assigned to the companies, regular companies, doing the work of men, you let them refuse the carpenter work and they are in their place and these men and myself that worked on companies, these man are standing here doing nothing. I don't think that is right."

So Andy, we talked it over for a while and he said, "Well, John, I am going to send them back

(Testimony of John L. Selgrath.)

to the office." So he asked them to go back to the office, and myself, I went out on the company, and then I didn't see Andy, Mr. MacDonald, any more that day until the next morning when I came in I was assigned to do carpenter work, and there was no argument between Mr. MacDonald and myself, I just asked what I should do and he told me to report to Local 80.

Q. What do you mean when you say these men were assigned to companies and the others were standing around doing nothing? What is the distinction?

A. Well, the men that had worked on the 22nd, we will say, they were assigned to a company, a regular company, there will be maybe any place from four to twelve men on a company shooting, which would be the first grip, the second grip, third grip, and then the rest they call them just the gang grips. I just happened to know Scoggins and Finch and Griffith and Day, they were all standing there, and they were [576] men who refused to do the carpenter work the day before, and was sent out on companies. Andy said he didn't believe that, if I could prove it, and I went and I got one of the boys that had told me that he had refused to do the carpenter work, Mr. Harry Fraser, and he told Mr. MacDonald that he had refused the day before.

Q. Did you go to see Mr. Barrett after Mr. MacDonald told you to?

A. I went over to see Mr. Barrett, yes.



(Testimony of John L. Selgrath.)

Q. Did you have any conversation with him?

A. There was quite an argument going on, yes, there were several grips there.

Q. Where did you see him?

A. In the Local 80 hall, Santa Monica Boulevard.

Q. Tell us what was said.

Mr. Mitchell: Objected to as being immaterial as to respondents.

Trial Examiner Riemer: The objection is overruled, but Mr. Rissman, I am not interested in hearing a long story about an argument that this witness had and conversation with Barrett. Let's hear it, but let's let the testimony be confined to that.

Mr. Rissman: Yes.

The Witness: I asked him what I should do and he said if I didn't want to do carpenter work I can call the studio, [577] call Andy MacDonald and have him fire me.

Mr. Mitchell: I move that the statement be stricken for the same reason the objection was made.

Trial Examiner Riemer: The motion to strike is denied.

Q. (By Mr. Rissman): Did you tell him you would not do carpenter work?

A. That is right.

Q. Did he ask you why?

A. No, he did not.

(Testimony of John L. Selgrath.)

Q. Did you tell him why?

A. No, I did not.

Q. While you were there did he call Mr. MacDonald?

A. He did.

Q. Did you hear his end of the conversation?

A. Told him to fire us, yes.

Q. Did you go back to the studio after that?

A. I went back that same day.

Q. At what time was this when you got back to the studio?

A. 12:30.

Q. Who did you see when you came back to the studio?

A. Mr. MacDonald.

Q. Did you have any conversation with him?

A. Asked him what he wanted to do with us.

Trial Examiner Riemer: What was that answer?

(The answer was read.) [578]

Q. (By Mr. Rissman): What did he say?

A. He said he didn't know what to do with us.

Q. Go ahead, give us the whole conversation between you and MacDonald when you came back to the studio.

A. I asked him what he wanted to do and he said, well, he had no right to fire us and he didn't know what to do with us. So I asked him if we could make arrangements to see Mr. Walsh, so he called the office and Mr. Walsh was not in. That is William R. Walsh.

Q. You are referring now to William R. Walsh, the labor relations or personnel director of Loew's Incorporated?

A. Yes.

(Testimony of John L. Selgrath.)

Q. You are not referring to Richard Walsh, who is president of the I.A.T.S.E.? A. No.

Q. Did you go to see Mr. Walsh?

A. Well, we came in then on Monday morning.

Q. On that day did you see him?

A. No, he was not there.

Q. Did you see him after that?

A. On Monday morning.

Q. This first incident, when you came back to the studio around 12:30 and had a conversation with MacDonald, that was on Saturday?

A. That was on Saturday. [579]

Q. And you could not see Walsh because he was not there, so you came in Monday, is that right?

A. That is right.

Q. Did you see Walsh on Monday?

A. We did.

Q. Who was with you?

A. Mr. Finch and Mr. Scoggins.

Q. Where did you see William R. Walsh?

A. In his office, the labor relations office.

Q. Did you have any conversation with him?

A. Yes, quite a conversation.

Q. All right, tell us what conversation you had with Mr. Walsh.

A. Well, it lasted for an hour and a half. Finally I asked him what he wanted to do with us, and he said, well, he didn't know, he didn't know what to do with us. He would not fire us and he would not lay us off.

(Testimony of John L. Selgrath.)

Q. Is that what he said?

A. That is right, so I agreed that I would go home and stay until it was over.

Trial Examiner Riemer: Will you read that answer?

(The answer was read.)

Q. (By Mr. Rissman): Do you recall anything else that you said to Mr. Walsh or that he said to you at that time?

A. No, I do not. [580]

Q. Do you recall talking to him about crossing the picket line?

A. Well, we told him that we didn't think it was right to cross—no, it was not right to take them jobs of the men that were out. I agreed with him that I would cross the picket line and do my own work.

Q. You had been crossing the picket line to do your own work ever since March 12th, hadn't you?

A. Yes, sir.

Q. Did you ever refuse to do your own work as a grip?

A. No, sir.

Q. After your conversation with Mr. Walsh on Monday, March 27th, 1945—

Mr. Mitchell: Now, wait a minute.

The Witness: The 26th.

Mr. Mitchell: If March 23rd is Saturday, which I doubt, then it is not March 27th on Monday.

Trial Examiner Riemer: Does any one have a 1945 calendar? Off the record.

(Discussion off the record.)

(Testimony of John L. Selgrath.)

Trial Examiner Riemer: On the record.

Q. (By Mr. Rissman): When you saw Mr. Walsh and had the conversation with him on Monday, March 26, 1945, did you see or talk with any other company official on that day?

A. Yes. [581]

Q. Who did you see?

A. We were in the restaurant eating when the superintendent of construction's secretary came in to tell us that Mr. Jerry Mayer wanted to see us.

Q. Jerry Mayer? A. Yes.

Q. Who is Jerry Mayer?

A. Studio manager, I believe.

Q. Did you know Mr. Mayer? A. Yes.

Q. Before that time? A. Yes.

Q. Did you go to see him? A. Yes, sir.

Q. How long was this after your conversation with Mr. Walsh?

A. Oh, I would say an hour.

Q. You were in the studio restaurant?

A. No, we was on the outside.

Q. Did you go back into the studio?

A. Yes, sir.

Q. Did you see Mr. Mayer? A. Yes, sir.

Q. Where did you see him?

A. In his office.

Q. What conversation did you have with Mr. Mayer? [582]

Mr. Mitchell: Object upon the ground no foundation has been laid as to who else was there.



(Testimony of John L. Selgrath.)

Q. (By Mr. Rissman): Was anyone else there?

A. There was Mr. Gabourie, superintendent of construction, Mr. William Walsh, and Mr. Hopper.

Q. Who is Mr. Hopper?

A. I believe he was Mr. Mannix' assistant.

Trial Examiner Riemer: Mr. whose assistant?

The Witness: Mr. Mannix.

Q. (By Mr. Rissman): And is Mr. Mannix with Loew's, Incorporated? A. Yes.

Q. What is his position?

A. General manager, I believe.

Q. And was anybody else there?

A. Mr. Scoggins.

Q. Who is he? A. He is a grip.

Q. Was there anybody else there that you can recall? A. No.

Q. Tell us what conversation took place in this meeting.

A. Well, he just tried to sell us the idea of going back to work.

Q. Who? A. Mr. Mayer. [583]

Q. What did he say?

A. Oh, he carried on the conversation that we should stay with the company and make pictures, and brought in the fact that the boys at war in the trenches, they needed entertainment, and we had been loyal to the company so many years that we should continue to be loyal.

Q. What did you say, if anything?

A. I told him that 1933, when I was working

(Testimony of John L. Selgrath.)

in the carpenter shop that this same thing had come up again, told him how that previous to that time how they came to the studio, if we didn't take a job as a grip or stand-by carpenter that we were fired, so I took that job, and told him about my daughter coming home one day from school and telling me that she couldn't play with the other kids because her dad was a scab. So that ended that.

Q. Before you told Mr. Mayer and the others present about this incident of 1933, did you say anything to him as to why you would not do carpentry work?

A. Well, I told him that I didn't believe that it should be settled with the men at the gates, it should be settled with the union's executives in the halls, and not out there fighting.

Q. Can you recall anything else that you told him?

A. Well, this man Scoggins, he got in an argument with Mr. Mayer, and he was ready to quit his job. I told Mr. Mayer [584] then what a good man he had been and how he had worked.

Q. What a good man Scoggins had been?

A. Yes. So he finally went over and sat down.

Q. Have you exhausted your recollection as to that conversation? [585]

A. Well, I don't remember any more about it.

Q. Did you say to Mr. Mayer and the others who were present at that time that you could not do

(Testimony of John L. Selgrath.)

carpentry work because it was against your principles as a union man to scab on any union?

Mr. Luddy: That is objected to as leading and suggestive.

Trial Examiner Riemer: Sustained.

Q. (By Mr. Rissman): Do you recall anything else that you said at that conversation?

A. No, I don't.

Q. Did Mr. Mayer or anyone else at that meeting direct you to anybody else's office after that?

A. Well, the meeting was over with and Mr. Scoggins and I started to leave and Mr. Hopper, I believe his name is Hopper now.

Q. Mannix' assistant?

A. That is right. He said Mr. Mannix wanted to see us.

Q. Did you see Mr. Mannix?

A. We waited for an hour and went over to his office.

Trial Examiner Riemer: Had Mannix been present at this meeting in Mr. Mayer's office?

The Witness: No, sir.

Trial Examiner Riemer: He was not?

The Witness: No. [586]

Q. (By Mr. Rissman): Did you see Mr. Mannix?

A. Mr. Hopper and Mr. Mannix, yes.

Q. The two of them, and you and Scoggins?

A. Yes.

Q. Where did you see them?

(Testimony of John L. Selgrath.)

A. In Mr. Mannix' office.

Q. What conversation took place at that time?

A. Well, they told us that we had been with the corporation so many years, that he didn't like to see us leave, and tried to sell us the idea, told us about a set that was down in the studio that they had had a lot of trouble over, and the carpenters were claiming the work and Local 44, they claimed the work, and how he had to go out and rent props in order to take the place of the part of the set in order to overcome the argument between the two locals, and so then he wanted us to say that we would go back to work, some part of the work, that we could go back on our regular jobs.

Q. What else was said at that time?

A. Well——

Q. By anybody, by any one of the four of you who were present?

A. They were just trying to tell us about how the carpenter was trying to get the work away from Local 44 of the I.A.T.S.E. and how they were going to try to keep the studios open, and that he thought we should stay with our [587] unions and do our work, whatever was asked us to do.

Q. What did you say?           A. I said no.

Q. Did Mr. Scoggins say anything or ask any questions at that meeting?

A. He asked him if we did not do that work if we would lose our jobs, and he said he did not think so.

(Testimony of John L. Selgrath.)

Q. Who said he did not thing so?

A. Mr. Mannix.

Q. Was anything said about going back to your regular work?

A. Yes, we asked him if we could go back to our regular work and he said no, that we would have to do some of the work that was assigned to us, that was carpenter work.

Q. Was anything else said at that meeting?

A. No, sir, not that I can remember.

Q. Did you work in the studios at Loew's or M.G.M. at any time after March 24, 1945?

A. I went back on the 19th of December, 1945.

Q. Before we get to that, did you work at any time between March 24, 1945, and the end of the strike?

A. No, I did not.

Q. Were you asked to come back at Loew's at any time before the end of the strike?

A. Twice I was offered my job back providing I would work [588] from thirty minuts to two days in the mill as a carpenter.

Q. When were the offers made and by whom were they made?

A. On October 5th—the first offer was in July, by Mr. Lester White.

Q. Who is Lester White?

A. He is a cameraman that I had worked for in the studio. He came out to the house and told me he would like to have me go on a picture that was shooting on location, and he had talked to Mr.



(Testimony of John L. Selgrath.)

Gabourie and Mr. McDonald, and they had told him that if I would work probably thirty minutes or a day or so in the mill I could have my job back.

Q. What did you say to him?

A. I told him no.

Q. When was the second time?

A. I went before Mr. Fitzpatrick, the unemployment referee.

Q. That is an official of the State of California?

A. That is right.

Q. Where was this?

A. 1100 South Flower, I believe, the unemployment office there.

Q. Is that the office of the Unemployment Compensation Division?

A. That is right.

Q. Was there anyone from the company present at that time?

A. Yes, William Walsh. [589]

Q. What was the occasion of your being there at that time?

A. Well, I had applied for unemployment insurance, and it had went before the referee. I had the hearing on September 27, and it was held over on account of they wanted to contact the studio and so on October 5th when Mr. Walsh was there at that hearing, so the referee, Mr. Fitzpatrick, asked Mr. Walsh if I could go back to work at the studio and he said, "Oh, most certainly, you have been with us a good many years, we would like to have Mr. Selgrath with us."

(Testimony of John L. Selgrath.)

So Mr. Fitzpatrick asked him if I would have to do the work that I was not assigned as a grip.

He said, "Oh, yes." He said, "Sure, he would have to work a little while in the mill, then he would go back to his regular position."

Q. Did you accept that employment?

A. I did not, no, sir.

Q. After the strike was ended on October 31, 1945, did you go back to the studio?

A. I reported on October 31. I saw Mr. McDonald. He told me that—this was at the construction office—and I asked him if I was to come back, and he said, "Yes, but wait just a minute," that he would see Mr. Gabourie. He went into Mr. Gabourie's office and came out and told me that I was to come back to work the next morning, and I asked him, "Will I be back a key man?" [590] He said, "Yes, John."

Q. Did you come back to work the next morning?

A. I came back to work at 8:00 o'clock and my card was not in the rack, and I was told by a gang boss that was in the grip room to report to Mr. Gabourie.

Q. Did you report to Mr. Gabourie?

A. Yes, at 9:00 o'clock I reported to Mr. Gabourie.

Q. What conversation took place with Mr. Gabourie?

A. He just told me to report to Local 80.

Q. Did you report to Local 80?

(Testimony of John L. Selgrath.)

A. Yes, sir.

Q. Who did you see there?

A. Mr. Barrett.

Q. What conversation did you have with him?

Mr. Mitchell: Object upon the ground it is immaterial.

Trial Examiner Riemer: Overruled.

The Witness: I just went in the office and said, "Well, what about it?"

He said, "Well, John, I can't do anything for you. It is somebody higher than me."

So that is all.

Q. (By Mr. Rissman): Now, when you reported for work—

Trial Examiner Riemer: Gentlemen, the hearing will recess for five minutes.

(Short recess taken.) [591]

Trial Examiner Riemer: The hearing will be in order.

Q. (By Mr. Rissman): Mr. Selgrath, when you reported for work on October 31 and November 1st, 1945, were you told by anyone connected with Loew's, Incorporated, that there was no work for you because you didn't go to Bill?

A. When was this now?

Q. On October 31 and November 1st, 1945.

A. No.

Q. Are you a member of Local 80 at the present time?

A. Yes.

Q. Are you in good standing?

(Testimony of John L. Selgrath.)

A. Yes, sir.

Q. Have you always been in good standing in that local?      A. Yes, sir.

Q. Were you ever advised by anyone connected with the local that you were not in good standing?

A. No.

Q. After October 31 or after November 1st, 1945, when was the next time that you saw anyone at the studio with respect to getting your job back?

A. I wrote Mr. Walsh, William Walsh, a letter and asked him if I could have my job back.

Q. Approximately when was that?

A. I would say that was around November 20th that I wrote the letter. [592]

Q. Did you get your job back after you wrote that letter?

A. I got an answer from him that he said that——

Mr. Mitchell: Well, now, wait a minute. I think these written documents are the best evidence, rather than repeating what is in them.

Mr. Rissman: Well, if you have them I would be glad to put them in evidence.

Mr. Mitchell: I don't know whether I do or not, but I will see. I have here a copy of a letter dated November 14, 1945, from Mr. Selgrath to Loew's, Incorporated, and a copy of a letter dated November 26, 1945, from Mr. Walsh to Mr. Selgrath, which I will be glad to furnish you if you want them.

Mr. Rissman: I have not seen them. I will use

(Testimony of John L. Selgrath.)

these, Mr. Mitchell, if you have no objection. [593]

Mr. Rissman: Will you mark this Exhibit 9?

(Thereupon the document above referred to was marked Board's Exhibit No. 9 for identification.)

Q. (By Mr. Rissman): Mr. Selgrath, I will hand you a document which has been marked Board's Exhibit No. 9 for identification, and ask you if that is a copy of the letter which you sent to Mr. Walsh, or which you sent to the Studios?

A. Yes.

Q. And did you send it on or about November 14?

A. Yes. I figured November 20. About November 14, yes.

Mr. Rissman: I will offer Board's Exhibit 9 in evidence.

Trial Examiner Riemer: Is there any objection? It may be admitted and marked in evidence as Board's Exhibit 9.

(The document heretofore marked Board's Exhibit No. 9 for identification was received in evidence.)

Mr. Rissman: I would like to have this marked Board's Exhibit 10.

(Thereupon the document above referred to was marked Board's Exhibit No. 10 for identification.)



(Testimony of John L. Selgrath.)

Q. (By Mr. Rissman): I show you copy of a letter dated November 26, 1945, which is Board's Exhibit 10 for identification. Do you recall if that is a copy of a letter you received from Mr. Walsh?

A. That is right.

Mr. Rissman: I will offer this as Board's Exhibit 10. [594]

Trial Examiner Riemer: Is there any objection, gentlemen? It may be admitted and marked in evidence as Board's Exhibit No. 10.

(The document heretofore marked Board's Exhibit No. 10 for identification was received in evidence.)

Q. (By Mr. Rissman): Directing your attention to the second paragraph in the letter from Mr. Walsh to you, Mr. Selgrath, which is Board's Exhibit No. 10, were you a member of Local 80 at that time?

A. Yes.

Q. Did you ever receive any notice from Local 80 that you were not in good standing?

A. I did not.

Q. Were you ever told by anyone connected with Local 80 that you were not in good standing?

A. No.

Q. Did you ever communicate with anyone from Local 80 after you received the letter from Mr. Walsh which is in evidence as Board's Exhibit 10?

A. I called Mr. Baird about the 18th of December, and he told me to go back to work at M.G.M.

Q. Did you go back to work at M.G.M.?

(Testimony of John L. Selgrath.)

A. I reported the next morning, yes, sir, December 19th.

Q. And who did you see at that time?

A. Mr. McDonald. [595]

Q. Did you have any conversation with him?

A. He told me Mr. Gabourie wanted to see me before I could go to work.

Q. Did you see Mr. Gabourie? A. Yes.

Q. Did you have any conversation with him?

A. He told me he would hire me as a new man, I would just be a grip, is all.

Q. What was your rate of pay as a grip, the rate at which you went back on December 19th?

A. \$1.63.

Q. What was your rate of pay when you were a key man? A. \$2.05.

Q. Did Mr. Gabourie give any reason as to why you would be hired as a new man?

A. Well, he said that I had left, and he didn't have any vacancies to put me back as a key man.

Q. What is your rate of pay now?

A. \$1.63.

Q. You are still a grip?

A. Still a grip; yes, sir.

Q. And what is the rate of the key men at the present time?

A. It is around \$139.50 a week. They are on a flat salary.

Q. That is for a 36-hour week?

A. No, that is about 60 hours. I won't say for sure. [596]

(Testimony of John L. Selgrath.)

Q. A 60-hour week?

A. A 60-hour week, and time and a half after 60.

Q. When you came back to work on December 19, 1945, did you have to fill out an employment application?

A. Yes, I believe I did. Now, I won't say for sure. Let me see. Yes, I think I did.

Q. Before the strike had you executed any authority to the company for deducting sums of money from your earnings for war bonds?

A. Yes.

Q. And for Motion Picture Relief?

A. Yes.

Q. Did you execute any such authority after you came back on December 19th? A. No.

Q. Have such deductions, and were such deductions made after December 19th? A. Yes.

Q. Were you given a new clock number when you came back on December 19th?

A. No. They work that very funny there. You always have the same clock number. When you come back you always have the same number.

Q. After March 24, 1945, were you willing to go back to work at Loew's, Incorporated, to your former position as a key man, [597] key grip man?

A. Yes.

Q. Are you now willing to go back to your former job as a key grip man? A. Yes.

Q. Did you tell us how long you had been a key grip? A. From July, 1933.

(Testimony of John L. Selgrath.)

Q. About 12 years? A. Yes.

Q. Have you spoken to Mr. Gabourie or anyone else in charge of the company since March 19 with respect to getting back on your own job as a key grip man, rather than just a grip man?

A. I don't believe I understood that.

Trial Examiner Riemer: Read the question.

(The question was read.)

Trial Examiner Riemer: Do you mean March 19?

Mr. Rissman: I mean December 19, 1945.

The Witness: Andy McDonald's assistant.

Q. (By Mr. Rissman): What is his name?

A. Don Duckfield.

Q. When did you talk to him?

A. He assigns men as the telephone calls come in, see; so I had been working in the shop, and so he come and asked me if I would go upon a property room, back of the property room there, and set up a wall, and stay there and see what was needed. [598] So I went up there and put the wall up, and went back and told him that it would be a first man's rate, and I didn't believe that he had authority to assign me to any such job as that.

So he said, "Well, Mr. McDonald will be in in a few minutes." So Mr. McDonald come in, and I told him what the job was, it was a first man's work, and he said, "Well, wait a minute," he said, "I would like to have you go up myself, I would love to have you go up and take the job, but wait, I will

(Testimony of John L. Selgrath.)

call Mr. Gabourie." And he called, and Mr. Gabourie said no, he couldn't do it.

Mr. Mitchell: When was this? I didn't object, but——

The Witness: It was in May, May of 1946. I can't give you the exact date.

Q. (By Mr. Rissman): Was that the only conversation you have ever had with any of them regarding your reinstatement to your former position as a key grip, rather than just grip man?

A. Yes.

Mr. Rissman: That is all.

Trial Examiner Riemer: May I interrupt to ask a few questions, Mr. Mitchell?

Mr. Mitchell: Yes.

Q. (By Trial Examiner Riemer): Mr. Selgrath, will you explain in a little more detail than you did before what your duties were prior to March 24, 1945, as a key grip? [599]

A. A key grip works for the company. He is directly under a cameraman. The cameraman and the director, they pick out various shots. Now, if there is any walls to move, the key grip supervises the moving of these walls, and he gets the plan of the set and so goes over the plan, and he finds out what walls can be moved or what beams can be taken out; and when the time arrives, he supervises all that. Then if there is any scaffold to be built, he is supposed to be capable of building any scaffold platforms, or outriggers. Lots of times on locations we



(Testimony of John L. Selgrath.)

would have outriggers to put on the side of ships, we will say. He has to do the supervising of that. And various times in buildings they want to put a platform out of the window, we will say, out four or five feet, maybe as high as—well, even the R.C.A. Building in New York, we have put a camera on top of the R.C.A. Building. And we have to use carpenter tools and rigging tools of all kinds. And on each of the sets we have reflectors that we use for lights, and we set them up and use our knowledge of lighting. And if it is approved by the cameraman, he goes ahead and shoots it, or else we change it. And camera cranes, what are known as the booms, we operate them. They have boom operators as of today, but any time they ask us to do it, why, we have to do it. There are so many things now, like we have to tell our foreman how much equipment we have to have on these different sets, you know, line up the sets, as they call [600] it, and usually talk it over with him on how many men we need.

Trial Examiner Riemer: Thank you. Mr. Mitchell, go ahead.

#### Cross-Examination

By Mr. Mitchell:

Q. When you say a key grip, is that sometimes known as a key company grip? A. Yes, sir.

Q. When you speak of a company, you are talking about a shooting company, isn't that right?

A. That is right, sir.

(Testimony of John L. Selgrath.)

Q. In the studios the units that engage in the production of an individual picture are called shooting companies, isn't that right?

A. That is right.

Q. So that if Clark Gable is playing in a certain picture, there are sets put up on stages, and then a group of people, including the actors, the cameraman, the director, and so on, go out to that set and constitute a shooting company, isn't that right?

A. That is right, yes.

Q. And in addition to the director and the artists, there is on a shooting company a script clerk, isn't that right?

A. That is right.

Q. And there is a chief electrician and his assistants?

A. Yes, sir. [601]

Q. And then sometimes they have crews of lamp operators?

A. Yes.

Q. On these so-called shooting companies?

A. That is right.

Q. And they have a—not a prop maker, but a property man who is a member of the shooting company?

A. That is right.

Q. And they also have a certain number of grips that are members of the shooting company, is that right?

A. And a unit manager.

Q. And a unit manager?

A. Yes.

Q. Now, with respect to these grips, they have a man called the first company grip?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

(Testimony of John L. Selgrath.)

Q. And he is, in a sense, isn't he, a straw boss?  
Doesn't he work with his hands?

A. Yes, but he is not a straw boss.

Q. Well, he works with his hands?

A. That is right.

Q. And then there may be one or more assistant company grips, is that right?

A. That is right. [602]

Q. And then there may be some ordinary grips who are assigned to a company? A. Yes.

Q. The grips also do work away from the companies, don't they? A. That is right. [603]

Q. In the shops or somewhere?

A. All over the lot and in the shops, yes.

Q. Now, are you working now, Mr. Selgrath?

A. Yes, sir.

Q. Were you working yesterday, for instance?

A. No, sir.

Q. And you didn't go to work this morning?

A. No, sir.

Q. How many days have you been not working?

A. Oh, a couple of weeks, I don't know.

Q. A couple of weeks you have been off?

A. That is right.

Q. And you are not working now because there is now a strike in the motion picture industry, isn't that right?

Mr. Rissman: I object.

Trial Examiner Riemer: Overruled.

The Witness: I did not lay off because of the strike, sir.

(Testimony of John L. Selgrath.)

Q. (By Mr. Mitchell): Well, did anybody in the studio lay you off?

A. I am just off. I just took time off. I told Mr. McDonald I would see him later. I would work probably maybe, oh, work three or four weeks, and lay off a week.

Q. Well, you voluntarily stopped working?

A. That is right. [604]

Q. And when did you voluntarily stop work this last time?

A. I believe it was a week ago—let me see, two weeks ago Saturday, I believe it was. I wouldn't say for sure. Yes, it was two weeks ago Saturday I was off.

\* \* \*

Q. Did you have any information during the period of the strike that the leaders of the I.A.T.S.E. were requesting the membership to perform such services as the studios might require in order to keep open?

Mr. Rissman: I object if the question refers to any time after March 24.

Trial Examiner Riemer: Read the question and the objection.

(The record was read.)

Trial Examiner Riemer: Overruled.

Q. (By Mr. Mitchell): Do you want to hear the question [605] again, Mr. Selgrath?

A. No, I understand it. The only conversation that I ever had with anybody in respects to that was

(Testimony of John L. Selgrath.)

with Mr. McDonald, and that was on March 24. That was on a Saturday, and he told me that that was the orders, the I.A.'s were going to try to keep the studios open.

Q. And did anybody connected with the I.A.T.S.E. ever tell you that?

A. Mr. Baird on that same morning, sir, he told us up there in the hall that the I.A.'s were trying to keep the studios open.

Q. And did he say what the members were to do in order to accomplish that result?

A. He told us we would have to do whatever work was assigned to us.

#### Cross-Examination

By Mr. Luddy:

Q. Mr. Selgrath, when did you first go to work; that is, what year, in the Hollywood studios?

A. About 1926, sir.

Q. And what classification of work?

A. I was a laborer. [606]

\* \* \*

Q. Now, in 1933 or prior thereto, jurisdiction over the grips or the work that had been done by the grips, prior to that time was in the I.A.T.S.E., wasn't it? A. That is right; yes, sir.

Q. The I.A.T.S.E. went out on strike in July '33, didn't it? A. Yes, sir.

Q. And then you stepped in and took over the



(Testimony of John L. Selgrath.)

work that had been vacated by the I.A.T.S.E. groups, didn't you?      A. Yes, sir. [609]

\* \* \*

Q. (By Mr. Luddy): Now, when did you join the I.A.T.S.E. first?      A. In 1936, I think.

Q. And is that when the I.A.T.S.E. came back into the studios and procured contracts for the first time since 1933?      A. Yes.

Q. And the I.A.T.S.E. in 1936 reacquired jurisdiction over grips in the studio, didn't it?

A. Yes.

Q. And in order to work in the studios as a grip after 1936, you had to be a member of the I.A.T.S.E., is that right?

Mr. Rissman: I object, if the Examiner please.

Trial Examiner Riemer: Overruled.

The Witness: Yes. [613]

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